United States Court of Appeals

for the Second Circuit

APPENDIX

[redacted], 76-4087

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

THE GREASE COMPANY, and THEATRE NOW, INC.,
RESPONDENTS.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board,
Washington, D. C. 20570.

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In the Matter of:

THE GREASE COMPANY AND THEATRE NOW, INC.

Case No.: 31-CA-3825.

6.18.73	Charge filed.
7.26.73	Complaint and Notice of Hearing, dated.
8. 1.73	First Amended Charge, filed.
8. 6.73	Respondent's Answer to Complaint, dated.
8. 6.73	Amended Complaint and Notice of Hearing, dated.
8.28.73	Respondents' Answer to the Amended Complaint, dated.
8.29.73	Teletype rescheduling hearing, dated.
9. 6.73	Teletype resetting hearing, dated.
9.19.73	Hearing opened.
9.20.73	Hearing closed.
11.30.73	Administrative Law Judge's Decision, issued.
12.18.73	Respondents' Motion to Reopen the Record, dated.
12.26.73	General Counsel's Telegram opposing Respondent's Motion to Reopen the Record, dated.
1. 4.74	General Counsel's Exceptions to the Decision of the Administrative Law Judge received.

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6.13.74 Board's Decision and Order, dated.

Decision.

JD-735-73
Los Angeles, Calif.

UNITED STATES OF AMERICA
Before the National Labor Relations Board
Division of Judges
Washington, D. C.

THEATRE NOW, INC. and THE GREASE COMPANY

and

JOSEPH F. DOUCETTE, SR.

Case No. 31-CA-3825

Jay R. Pollack, Esq., of Los Angeles, Calif., for the General Counsel.

Joel Arnold, Esq., of New York, New York, for Theatre Now, Inc., and The Grease Company.

STATEMENT OF THE CASE

NANCY M. SHERMAN, Administrative Law Judge: This proceeding, heard at New York, New York, on September 19 and 20, 1973, pursuant to a charge filed on June 18, 1973, a complaint issued on July 26, 1973, an amended charge filed on August 1, 1973, and an amended complaint issued on August 6, 1973, presents the questions, *inter alia,* (A) whether Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, (herein called the Act) was violated by the discharge of Joseph F. Doucette, Sr. (herein "Doucette" or "Doucette, Sr.") and Joseph F. Doucette, Jr. (herein "Doucette, Jr."); and (B) whether Section 8(a)(1) of the Act was violated by statements allegedly made to Doucette about the reason for the discharges.

Upon the entire record, including my observation of the witnesses, and after due consideration of the briefs filed by Respondents and counsel for the General Counsel, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Grease Company (herein "Respondent Grease") is a New York limited partnership engaged in the production of musical or legitimate theater shows for exhibition to the general public. Its annual gross revenues exceed $500,000, of which more than $50,000 is derived from productions outside the State of New York. I find that, as the answer to the amended complaint admits, Respondent Grease is an employer engaged in commerce and in a business affecting commerce within the meaning of the Act; that (as Respondents' counsel admitted at the hearing), Respondent Grease was an employer of the Doucettes; and that exercise of jurisdiction over its operations will effectuate the policies of the Act.

Theatre Now, Inc. (herein "Respondent Theatre") is engaged in the business of managing theatrical productions for its customers, including Respondent Grease, which customers are engaged in the production of musical or legitimate theater shows for exhibition to the general public. It annually derives revenues in excess of $50,000 from services performed outside the State of New York. I find that Respondent Theatre is engaged in commerce and in a business affecting commerce within the meaning of the Act. The amended complaint alleges that Respondents were a joint employer of the employees of Respondent Grease in its national touring company, which employees included the Doucettes. The answer to the amended complaint denies the joint-employer allegations; the answer to the original complaint asserted, as did Respondents' counsel at the hearing, that for purposes of this proceeding Respondent Theatre acted solely as an agent of Respondent Grease. The issues so presented are resolved hereafter.

The parties stipulated at the hearing, and I find, that International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (herein "the Union") and Local 381 of that organization are both labor organizations within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. *Background*

1. The Relationship between Respondents

Edward H. Davis is vice-president of and one of a number of stockholders in Respondent Theatre, which pays him a yearly salary. At a time not indicated in the record, Kenneth

Waissman and Maxine Fox Waissman,[1] the producers of the musical comedy *Grease*, approached Davis and (according to Davis) requested him to act as "their personal manager." Davis testified that he became "general manager of The Grease Company." While he was acting in this capacity, Respondent Grease paid his salary to Respondent Theatre. By December 1972, *Grease* was being shown in New York City, and a road production was in rehearsal. Respondent Theatre was hired by Respondent Grease to act as its corporate general manager for both the New York and the road productions.[2]

2. The Hiring of the Doucettes

In December 1972, Doucette was working as carpenter on the show *Purlie*, which was about to close. Having heard about the plans for a *Grease* road show, about December 10 or 11 Doucette applied to Davis for the carpenter's job on that show. The parties discussed the matter on two or three occasions prior to and including December 13, 1972. After the first meeting, Doucette went to see the show in New York, and then learned how to put the road show together by studying a set of scenery plans which he obtained from the shop where the scenery was built. Thereafter, Davis told Doucette that he was particularly concerned with holding

[1] Kenneth Waissman and Maxine Fox Waissman are husband and wife. In the record and in this Decision, Mrs. Waissman is referred to as Miss Fox. Her husband is herein referred to as Waissman, and the two of them together as the Waissmans. In addition to numerous limited partners, Respondent Grease has two general partners—Kenneth Waissman and Waissman & Fox, Inc.

[2] The record fails to show whether any written contracts control the relationship between Respondent Grease or its producers on the one hand, and Davis or Respondent Theatre on the other. Nor does the record show either the amounts paid Respondent Theatre by Respondent Grease, or Davis' salary from Respondent Theatre.

down costs by "getting the show in" or "hung" (that is, getting the scenery installed in any theatre to which the road show moved) as quickly as possible, with a goal of 8 hours. Doucette replied that "if possible [he] would. [He] would need about three or four times to see what [he] could do."

During their December 13 conference, Davis asked Doucette, ". . . can you get an assistant or do you want me to find one?" and, in addition, specified the weekly salaries to be paid the carpenter ($429) and his assistant, the flyman ($354). Doucette replied that he wanted his son (Joseph F. Doucette, Jr.) to be his assistant, and that both salaries offered were inadequate. Davis asked whether Doucette, Jr., had worked before. Doucette replied that his son had been his assistant on *Purlie.* Davis said that he could not agree to pay Doucette, Jr., more than the other "assistants" (the assistant electrician and the assistant propman), with whom Davis had already made deals; and proposed that Davis obtain a different assistant who would work for $354. Doucette persisted that he wanted his son as his assistant, because "I have to work with the man, I didn't know who [Davis] was going to get me," and wanted more money for both of them. Davis and Doucette eventually agreed that the Doucettes would work as carpenter and flyman, respectively, at the salaries offered by Davis, with the understanding that in 6 weeks Doucette, Sr. would receive a $50 raise and Doucette, Jr., an "automatic" $25 raise if by that time the show was being hung within 8 hours. Doucette, Jr., never interviewed for the job or spoke to Davis before getting it.[3]

[3] My findings in the foregoing paragraph are based on the testimony of Doucette, whose demeanor impressed me more favorably than Davis's; on the testimony of Davis except where inconsistent with Doucette's; and, as to the sequence and context of the remarks made, on the probabilities of the situation. In connection with Doucette, Sr.'s role in the hiring of Doucette,

(Footnote continued on following page)

3. The Doucettes' Contracts of Employment; the Extent of Davis's Authority

Doucette brought to the December 13 discussion two printed individual employment contract forms obtained at the office of Local 381, of which both Doucettes are members. Many of the blanks on these contracts were never filled in. Davis filled in the blanks specifying the salaries to be paid. Doucette's contract concludes with the following language, with the blanks following "Party of the first part" filled in by Davis and those following "Party of the second part" filled in by Doucette:

> In witness whereof, This contract is made in triplicate and the parties have affixed their signature this *13* day of *Dec.*, 1972.
>
> Party of the first part *The Grease Co.* Per *E. H. D.* Permanent address *1564 B'way NYC*
>
> Party of the second part *Joseph F. Doucette* Member of Local No. *381* Permanent address *P. O. Box 48 Newton Junction, N. H. 03859*

The address thus filled in by Davis is the address of Respondent Grease, not of Respondent Theatre. The corresponding portions of Doucette, Jr.'s contract, which his father executed on his behalf because Doucette, Jr., was out of the city, are the same in all significant respects except for the "second part's" signature. Both contracts begin with the following printed material:

(Footnote continued from preceding page)

Jr., I note that counsel for the General Counsel offered on the record to stipulate that Davis "gave Mr. Doucette the right to choose his flyman and he chose his son," and that Doucette testified that Davis gave him the right to hire his assistant, and that Doucette selected his son.

Decision.

> This Agreement, made this ..... day of .... 19...., at ..... City ..... State, by and between ..... (Name of Company), party of the first part, and ....., member of Local No. ...., International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, party of the second part.
>
> Witnesseth: The party of the first part agrees, To engage the party of the second part as ..... with ..... Company. . . . (name of attraction)

To the extent that the blanks in the foregoing were filled in at all, they were filled in by Doucette before Davis signed these contracts. In both contracts, the word "Grease" appears in the blank labelled "name of attraction." The blank prior to the words "party of the first part" is not filled in on Doucette's contract. However, the words "Theatre Now" appear in that blank on Doucette, Jr.'s contract. Davis testified that this entry "got by me. I didn't notice it. I am usually very careful to make those changes because at the end of the show . . . when people apply for unemployment, they make the claim against Theatre Now and we have to write back and say no, the rightful company is the Grease Company, not Theatre Now."[4]

[4] The form contracts state on their face, "This is the official and only contract recognized by the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada." In addition, the signatory employer undertakes to "fill any vacancy that may occur under this contract at once with a member in good standing" of that Union; and the signatory employee undertakes to provide his services "subject, however, to" Union rules and to abide by the employer's regulations governing rehearsals and performances "insofar as they do not conflict with" Union by-laws. Further, both contracts provide, ". . . should any dispute arise under this contract (as to matters other than

(Footnote continued on following page)

On cross-examination, Davis testified that he did not have "sole authority to hire or fire anybody," that he "always discuss[ed] hirings with the producers of the show," and that he did this with respect to Doucette's hiring. However, on direct examination, Davis testified that he had authority to hire Doucette. Moreover, although both *Grease* producers (the Waissmans) subsequently testified on Respondents' behalf, they were not specifically asked about the extent of Davis' authority to hire or fire the Doucettes without first checking with the Waissmans, or whether he had in fact consulted with them about the matter. Furthermore, Doucette credibly testified that Davis agreed to hire Doucette, Jr., during the same conversation when Davis signed Doucette, Jr.'s contract of employment. For these reasons, because Davis was directly impeached as to a critical part of related testimony (see *infra* Part II Cla), and because I was not impressed by his demeanor, I discredit his testimony regarding

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(Footnote continued from preceding page)

claims for salaries due, or drunkenness, or dishonesty, or incompetence; the latter three of which, or any of them, shall be sufficient reason for the immediate cancellation of this contract) such dispute shall be adjusted by means of an arbitration board. The arbitrators shall be: one appointed by the International Theatrical Association . . . , who shall be a member of the Association; one a member of the [Union], and the third, should his appointment be necessary, someone mutually agreed upon by the other arbitrators."

However. Respondents have at no time contended before me that I should defer to arbitration. Accordingly, I need not and do not consider whether these individual contracts of employment would call for deferral to arbitration, under the principles set forth in *Collyer Insulated Wire,* 192 NLRB 837, if such a contention had been timely raised. *Nedco Construction Co.,* 206 NLRB No. 17 (sl. op. pp. 1-2). Furthermore, counsel for the General Counsel and counsel for Respondents stipulated that contractually, the employer had the right to terminate without cause. Also, Respondents contend that incompetence played a part in the discharge of both Doucettes; that dishonesty played a part in the discharge of Doucette, Sr.; and that both were terminated without cause.

the alleged limitations on his authority to hire or fire the Doucettes.[5]

4. The Doucettes' Job Responsibilities

The road show opened in Boston on December 23, 1972. After the opening night, Doucette and company manager Donald Antonelli decided how many carpenters would be used for the run of the show. More specifically, they decided that two carpenters (the Doucettes) would travel with the show; that 12 more carpenters would be ordered from the local Union in the city to hang and dismantle the scenery; and that three local carpenters would be used while the show was being performed. Laying to one side the matter discussed *infra* fn. 32 and attached text, this arrangement was subsequently approved by the Union business agent. From time to time, the number of local carpenters to be hired would vary in accordance with local practice or the particular theater's Union contract. In two cities (New Haven and Toronto), four rather than three local carpenters worked the show, the increase being determined by house conditions and a consultation between the stage manager, the local Union business agent, and Doucette. As shown *infra* Part II C 1a, the Union required Doucette to advise it in each city of the number of carpenters to be used in the show.

The Doucettes acted as *Grease* carpenter and flyman, respectively, from their December 13, 1972, date of hire to their discharge on June 17, 1973, during which period the show played in 14 different cities. Doucette, Jr., testified that his father was the head of the carpentry department. Doucette, Sr., testified that it was he who decided "how I'm going to put the show into the theater. Every theater is dif-

[5] *N.L.R.B.* v. *Walton Mfg. Co.*, 369 U.S. 404, 408; *Bon Hennings Logging Co.* v. *N.L.R.B.*, 308 F. 2d 548, 554 (C.A. 9).

ferent. It's up to me to decide where I can put the show to make it work. Some theaters may be small, I have to make the show tight." Shortly before the show was to move to another theater, Doucette would visit the new theater and make plans in his mind and on paper about how to hang the scenery. With the assistance of carpenters sent out from the Local Union in the area pursuant to an "advance call"—apparently made by Doucette, who (inferentially) decided on the number to be called—Doucette would then hang the "rigging" for the scenery. When the scenery arrived at the theater, it was unloaded by the Doucettes and by carpenters ordered from the Local Union in the city. Doucette testified that he was "a boss" over the local carpenters and "in charge" of them; that he told them how to take the scenery off the trucks and where to put it; that he was "responsible for [his] end of it, being sure that the show got up"; and that once the show was "operating fine, I just had to be sure that it kept going." Doucette, Jr., testified that his father had no power to fire anyone, but did not know whether any occasion for such action had ever arisen.

In his capacity as flyman, Doucette, Jr., acted as his father's assistant. Because the flyman is responsible for all scenery operated from the fly floor (a platform above the stage floor and out of sight of the audience), and because all the scenery in *Grease* was operated from the fly floor, Doucette, Jr., was responsible for seeing to it that the scenery was working at all times; was properly set up, maintained, and taken down; and was brought in and taken out on time in accordance with the production stage manager's cues. While operating the show, Doucette, Jr., had two or three assistants (local men) on the fly floor. When Doucette, Jr., regarded an assistant as unsatisfactory, he brought up the problem with his father and the house flyman; then (failing solution) with

the house carpenter and the stage manager; and then, still failing solution, with the Local Union, which might "fire the man." Doucette, Jr., had no power to fire anyone. On one occasion he "had a situation where somebody was unsatisfactory but we couldn't get rid of him but I changed the situation so after that he became satisfactory."

B. *The Events Allegedly Leading up to the Doucettes' Discharge*

The Doucettes were discharged in Los Angeles, California, on June 17, 1973. Counsel for the General Counsel contends that the significant events leading to their discharge occurred in connection with the processing of a grievance in Cincinnati, Ohio, between May 29 and June 2, 1973, relating to the discharge of sound man Bob Weeden. Respondents contend that the most significant event leading to their discharge was New York management's observation of a *Grease* performance in Toronto, Canada, on April 18, 1973, and that management reached the discharge decision by April 23, 1973, before the Weeden grievance arose. Respondents attribute the interval between the June discharges and the events which allegedly motivated them to the fact that on June 12, 1973, the *Grease* sets were hung in Los Angeles for an open-end engagement during which a new carpenter and a new flyman would be able to learn how to hang the show. The events material to the foregoing contentions regarding the motives for the discharges are summarized below.

1. The Doucettes' Work Performance

The road show opened in Boston on December 23, moved to Philadelphia for an engagement beginning January 8, and then moved to New Haven for an engagement beginning January 22. The Waissmans saw the show in Boston and Philadelphia, but not in New Haven. From New Haven, the

show moved to Baltimore for an engagement between January 29 and February 10.

While the show was in Philadelphia, Waissman had told then production stage manager Bill Leddich that the sight lines in the theater to be used in Baltimore were very poor, and every effort should be made to keep as much of the sight line as possible. Leddich assured him that every effort would be made. Prior to the opening night curtain in Baltimore, the Waissmans looked at the physical set. They thought it looked "generally fine." However, they went to the extreme sides of the audience side of the theater to check the sight lines and realized that the second level of the set, where a lot of action took place, was invisible from certain seats. At this time, Doucette was on stage. They asked him whether he could widen the gap between the black curtains hanging on the sides of the stage so as many people as possible could see the action on the second level. Doucette pulled them back and thereby enabled 50 to 100 more people to see the second level.[6] The Waissmans thanked Doucette, did not reprove him, and did not mention the matter to Leddich.

At the conclusion of the opening night performance in Baltimore, where the Waissmans were particularly anxious for a successful engagement because Baltimore is their home town and the theater used is hard to fill, the Waissmans were "elated" because the show was what they wanted it to be. They congratulated everyone, including the crew, for what they did that night, addressing the company in large or small groups. Later that week, Doucette, Jr., received a $25 a week raise. While the show was in Baltimore, Doucette decided that the set had to be changed so it could be hung in one day. After the show was hung in Baltimore, and with Davis' approval,

[6] However, owing to the physical limitations of both the theater and the set, a number of people were still unable to see the second level.

Doucette and other carpenters cut 2 feet off the back end of the set.

After leaving Baltimore, the show went to Pittsburgh, to Columbus, to Indianapolis, and then to Washington. In Washington, Doucette succeeded for the first time in hanging the set within 8 hours.[7] On March 5, the opening night in Washington, Davis told Doucette that he was "very happy . . . I knew you could do it in the time we wanted, in one day. It was a great saving for the company." On this occasion, Doucette, Jr., received a $25 bonus and a promise of a similar bonus each time the show was hung in 8 hours—as it was during the rest of the Doucettes' employment. About March 26 or 27 (after the show had moved from Washington to Cleveland), Doucette telephone Davis, reminded him of their agreement regarding a $50 raise if within 6 weeks he hung the show in 1 day, and said that now he had hung the show in 1 day, he thought he was entitled to the raise. Davis agreed to the raise, which Doucette received in that week's paycheck.

After the show left Baltimore, the Waissmans did not see it again until March 21, when it was running in Washington. There is no credible evidence that they had any complaints about the show there.[8] The record fails to show whether the

[7] My finding as to the date and city is based upon Doucette's credited testimony, corroborated by Miss Fox. Doucette, Jr., initially testified that this event occurred in March in Columbus, but gave an earlier date after examining a schedule showing that the Columbus run took place in February. I believe Doucette, Jr.'s initial recollection of the date was more reliable.

[8] Miss Fox testified that Waissman complained to then production stage manager Leddich that "the blacks had not been hung for masking" (that is, that the backstage area was inadequately concealed from the audience). However, Waissman was not asked about this incident, although according to his wife he was "very, very upset" about the matter. Davis testified that

(Footnote continued on following page)

Waissmans saw the show in Cleveland, where it moved after leaving Washington.

On Wednesday, April 18, Miss Fox, production supervisor Thomas C. Smith, and choreographer Patricia Birch came from New York to attend a matinee performance in Toronto, where the show had gone from Cleveland. Their visit was unannounced, but company manager Donald Antonelli made their hotel reservations and knew that they were coming.

As to the condition of the show in Toronto, Smith credibly testified as follows:[9] The show was "tired-looking" and "a lit-

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(Footnote continued from preceding page)

during the Washington run, one of the Waissmans (he did not remember which) complained to him that "certain pieces did not fly in or fly out as they previously had" and that "Certain masking and backing had not been there as it previously was in Boston." Davis further testified that "The feeling was" that the changes would be undone with the next move (to Cleveland) if for financial reasons this was not done in Washington. However, neither of the Waissmans testified about any conversation with Davis about the Washington show at this time, or about any changes in flying pieces. Nor is there any evidence that any alleged changes were undone in either Washington or Cleveland. Accordingly, and in view of the witnesses' demeanor, I do not credit Miss Fox's testimony that in Washington, Waissman complained to Leddich about the masking, or Davis' testimony that in Washington one of the Waissmans complained to him about a failure to fly pieces and to use adequate masking.

Doucette credibly testified without contradiction that in Washington one of the "hard legs" (wooden pieces of scenery) was left on the stage, instead of flying in and out, because the stage was too small to permit the flying operation, and that Frank Marino (who was taking over Leddich's job as production stage manager) asked about this. There is no evidence that any member of management reproved Doucette about the Washington show and as noted, he received a $50 raise after the show went from Washington to Cleveland.

[9] On the basis of the witnesses' demeanor, I credit Miss Fox's description of the defects in the show only to the extent that it was corroborated by Smith. In view of the statement by Respondents' counsel that Miss Birch is an independent entrepreneur, I draw no inference from her failure to testify.

tle bit sluggish." The "performances were a little slow." The music was too slow in some places and too fast in others, so the choreography could not be done the way it was set. Some accessories which were supposed to be part of the costumes were not being worn (defects which were the responsibility of the wardrobe man and the production stage manager). Some of the performers were wearing the wrong hair styles (defects which were the responsibility of the hairdresser and the production stage manager). Some of the props, including the benches, were torn, badly patched, or inadequately maintained (defects which were the responsibility of the prop man and the production stage manager). In addition, some of the scene changes were slow; some of the scenery was not being adequately maintained; the masking was insufficient; and a crack which had developed in one of the panels during the Boston run had widened, probably as a result of repeated disassembly and assembly, and was now visible to the audience.[10] The deficiencies described in this last sentence

[10] In addition, Smith testified that a particular panel (referred to in the record as "the Edsel panel"), which he believed important to the show's artistic effect, was not being used. Miss Fox testified that "there were panels not hung"; but the only unhung panel she specifically described was the Edsel panel. I discredit their testimony that a panel or panels were missing without proper authorization on the basis of their demeanor and the following facts: Smith did not specifically testify that he mentioned any missing panels to Doucette. Although the Doucettes (who testified prior to Smith and Miss Fox but were not called as rebuttal witnesses) were not specifically asked about a missing panel or panels, Doucette, Sr. (a reliable witness in most respects) testified generally that with exceptions not material here, the entire set was used at all times. Further, Smith and the Waissmans testified, in effect, that production stage manager Frank Marino (Doucette's immediate superior) was largely exonerated from blame regarding the missing panel or panels because Marino had not joined the show until the Washington run and told them that "He was told by Joe Doucette that that was the way he was given permission to hang it;" but neither of the Waissmans testified that any panel was missing from the

(Footnote continued on following page)

were under the jurisdiction of Doucette and the production stage manager.

After the April 18 matinee performance, Smith and Miss Fox spoke to Antonelli and Marino about the poor appearance of the show.[11] Smith admittedly discussed the painting of the scenery with Antonelli, who had had the authority to order it repainted. Doucette had not been present during the performance, and Miss Fox asked where he was. Antonelli and Marino told her that he had been in Detroit for a

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Washington show, even though both of them saw it while both Marino and the original production stage manager (Leddich) were with the show. Further, it seems inherently unlikely that if a panel or panels had been unexplainedly omitted during all of the 19 previous performances in Toronto and part or all of the Washington run, not a single member of the entire road company would have drawn the matter to the attention of responsible management.

Finally, although Frank Marino was still in the employ of Respondent Theatre and/or Respondent Grease at the time of the hearing, and although as to this and other matters discussed *infra* he possessed information highly material to the issues, he did not testify, nor was his absence explained. The same is true of company manager Antonelli, who (as will appear *infra*) likewise possessed information highly material to the issues. I infer that if Marino and Antonelli had testified, their testimony would have been unfavorable to Respondents. *N.L.R.B.* v. *A. P. W. Products Co.*, 316 F. 2d 899, 903-904 (C.A. 2); *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America* v. *N.L.R.B. (Gyrodyne)*, 459 F. 2d 1329, 1335-1346 (C.A.D.C.). Because of the foregoing considerations and Doucette's demeanor, I credit his testimony that with exceptions not material here, he never had a conversation with Marino with respect to cutting some of the sets and scenery out of the show.

[11] This finding is based on Smith's and Miss Fox's testimony, which I credit to this extent. However, for the reasons summarized *supra* fn. 10, and *infra* fn. 13, I do not credit their testimony that on this or a somewhat later occasion they complained to Marino about a missing Edsel panel or missing "pieces," and that Marino blamed Doucette.

couple of days doing advance work, and that they thought he would return on Thursday, April 19.[12]

On April 18 or 19, Smith described to Marino all the defects in the show, including those within the jurisdiction of the wardrobe head, the head electrician, the head prop man, and the Doucettes. Smith made certain suggestions to Marino regarding the need for and methods of performing prop maintenance and repair work outside of performance hours. He also told Marino that some of the panels were being dropped and raised too slowly (this being Marino's responsibility) and that additional masking should be hung—a matter under Doucette's jurisdiction. Smith told Marino that Smith and Miss Fox were going to discuss the cracked panel with general manager Davis, because Davis (rather than Marino or Smith) would have to authorize its replacement.[13] Marino told Smith and Miss Fox that Marino was having some trouble in getting along with Doucette.[14]

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[12] My finding as to this conversation about Doucette is based on Miss Fox's testimony. Because the inquiry seems natural under the circumstances, I credit her testimony that it was made, although Smith did not corroborate it.

[13] My findings in this paragraph up to this point are based on Smith's testimony, which I credit to this extent because of the indirect corroboration afforded by the credited testimony regarding the defects found. However, because of the uncontradicted testimony showing Marino's expressions of surprise and regret at the Doucettes' discharge, Marino's unexplained failure to testify, and Smith's demeanor, I do not credit Smith's testimony that Marino told him that Doucette had given Marino the impression that it was all right not to use the black masking about whose absence Smith was complaining.

[14] This finding is based on the testimony of Smith and Miss Fox, which I credit to a limited extent because of the indirect corroboration afforded by Doucette's uncontradicted testimony regarding Marino's post-discharge remarks to him ("We finally got where we could work together"). However, I conclude that Smith and Miss Fox (as well as Davis; see text attached to

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On Monday, April 16, Doucette had gone to Detroit (the location of the next run) to perform "advance work." He did not return until after the evening show on Wednesday, April 18.[15] On Thursday, April 19, Antonelli telephoned Doucette at his Toronto hotel and told him to come to the theater. When Doucette arrived, Antonelli called him to the office alone, and told him that Miss Fox had said that the sets were dirty and should be fixed. Antonelli told Doucette to telephone Davis in New York and see what could be done about it. Doucette then telephoned Davis and told him the set should have been painted and touched up. Davis "gave the okay to do it. That's if that was what [Miss] Fox wanted, he wanted the sets in perfect condition." Thereafter Miss Fox told Doucette that the paint was coming off, that the set should have been painted and some seats should have been reupholstered. Doucette replied ". . . we were going to do it, but we didn't have the money to do it in Detroit for the opening in LA." On April 18 or 19, Miss Fox and/or Davis

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fn. 30, *infra*) were somewhat overstating Marino's complaint. Marino unexplainedly failed to testify, and the record is barren of evidence that management ever asked Doucette to be more cooperative with Marino. Because Davis and the Waissmans planned by their own testimony to retain Doucette until the show had moved to Los Angeles, a date almost 2 months away, it seems to me that a strenuous complaint by Marino would have naturally led management to make such a request even accepting Respondents' contention that the decision to discharge the Doucettes was made on April 23.

[15] This was Doucette's second visit to Detroit to perform advance work. He was unable to perform any work during the first visit, because of an unscheduled rehearsal of the show then playing in the Detroit theater. On the basis of his demeanor and the testimony in this respect, I conclude that at least on the second occasion he spent somewhat more time in Detroit than was necessary to discharge his duties. However, Miss Fox's testimony shows that she was consciously exaggerating when allegedly telling Davis, Smith, and Waissman that Doucette had been absent for 4 days.

authorized a "paint call" (the engagement of employees to repaint the set), although the work would have to be done on Good Friday and, therefore, at overtime rates. Doucette did not have the authority to issue a paint call, or otherwise spend money, without his superior's approval; but Marino and Antonelli did. Also on April 19, Smith asked Doucette about the absence of black masking. Doucette replied that "there was a problem in hanging it the way it had been hung in Boston." Smith replied that he was aware of the time problem but felt that the masking could have been hung by using particular techniques outlined by Smith. Smith also asked him to "find another way of hanging the palm trees." Smith did not mention the cracked panel to Doucette.[16] The deficiencies described to Doucette during these conversations were corrected by the time the show opened in Detroit, its next destination.

Through Marino, Smith also gave general "notes" (inferentially, written warnings) to Doucette, Jr., about "some of the patterns that were too slow," in Toronto and, subsequently, in Detroit.[17] Smith testified that in Detriot "It was better but not perfect."

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[16] My findings as to Doucette's conversations with Antonelli, Davis, and Miss Fox are based on Doucette's credited testimony. In view of Antonelli's unexplained failure to testify and the fact that Davis' denials of the telephone conversation were somewhat uncertain, I do not credit such denials. I discredit as improbable Miss Fox's testimony that she did not speak to Doucette at all on this occasion, particularly in view of her credited testimony that after seeing the April 18 matinee performance she asked where he was. My findings as to Doucette's conversation with Smith are based on Smith's credited testimony, not specifically denied by Doucette.

[17] This finding is based upon Smith's credited testimony that he gave the notes to Marino, who told him that Marino had given the notes to Doucette, Jr. While Marino did not testify, Doucette, Jr., was not asked whether he received such notes or was ever reprimanded.

Miss Fox admitted that she had never told Doucette, Sr., that she was dissatisfied with his work. Waissman admitted that he had never told Doucette, Sr., that he was unhappy with the condition of the set. Davis admitted that he never told Doucette, Sr., that the Waissmans were dissatisfied with his work. Doucette testified that except for the April 19 conversations, while he was working with *Grease* management never told him that it was dissatisfied with his work, or warned or reprimanded him about it. Except to the extent that Doucette's testimony in this respect may be inconsistent with findings previously made. I credit such testimony.

Smith, the Waissmans, and Davis testified about various conversations among them which allegedly occurred at various times after Smith and Miss Fox had seen the April 18 matinee performance in Toronto and allegedly led to a decision by the Waissmans on April 23 to discharge the Doucettes. These alleged conversations are discussed *infra* Part II C 1a.

2. The Weeden Grievance.

About Friday, May 25, when the show was about to leave Detroit, sound man Bob Weeden was given 2 weeks' termination notice for reasons immaterial here. On May 25, Weeden complained about this by telephone to Doucette, who was performing advanced work in Cincinnati for the run to begin there on May 28. During this conversation, and during another conversation upon Doucette's May 26 return to Detroit, Doucette advised Weeden that if he thought his discharge was wrong, he should talk to the Union business agent. Weeden thereupon telephoned Detroit business agent Warren Wilson. Wilson told both Weeden and Doucette that the Union's New York business office is closed on Saturdays and he could do nothing, and advised Weeden to call Edward

Vignale, the Union's Cincinnati business representative, when Weeden reached that city.

On Tuesday morning, May 29, after the show had been hung in Cincinnati, Doucette telephoned Vignale and asked him to come to the theater to talk to Weeden, Vignale agreed to come down before the show began that evening, and asked Doucette to arrange a conference between Vignale, Antonelli, and Marino. Doucette thereupon made such arrangements, advising Marino that Weeden wanted to know why he had been fired.

When Vignale arrived at the theater, he conferred with Weeden about the matter. Thereafter, Doucette introduced Vignale to Marino. Antonelli proposed that the conference be held in his office. At this point, Vignale asked Doucette to sit in on the conference.[18] Accordingly, Doucette joined the group. Marino asked why Doucette had to be there; Doucette replied that he was brought in with Vignale to sit and listen, just as Antonelli was there to sit and listen. Vignale asked why management wanted to fire Weeden. Marino replied that Weeden was incompetent, that "the sound was not up to par in Detroit," and that, "I don't want him any more. I just want him to go, and that's it." Doucette asked Marino to give a more specific reason, but Marino refused. This was the only remark made by Doucette during the conference. Vignale said that he would have to talk to his office about the matter, and Antonelli said that he would have to talk to Davis "to

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[18] Vignale testified that he extended this invitation because ". . . the carpenter is like the ex officio head of the crew, like the steward of the crew, if there's problems. Each department has their department head, but if there's any particular department with respect to talking to management, talking to the Union, getting back and forth, he had a responsibility, he is sort of the steward of the crew in name like and I figured that Joe had called me about Mr. Weeden and I know Joe over a period of years."

find out if it would be okay to terminate." The meeting then broke up.

That same day, May 29, Antonelli advised Davis by telephone that various named persons, including Doucette, had met at the theater to discuss Weeden's discharge. Davis asked Antonelli why Doucette was present, and Antonelli replied that he did not know. Later that day or on the morning of May 30, Davis telephoned Doucette and asked why he was "getting involved in this." Doucette relied that he had only advised Weeden of his rights, and that Weeden was entitled to this information. Davis said, "...okay, you advised the man of his rights. Now let's let them take care of it."

After consulting by telephone with Union president Walter Diehl in New York, Vignale came back to the theater on the afternoon of May 30 for a further conference with management. The same four people met again, while the show was in progress. Vignale said that the Union could not get Weeden's job back, but the notice had to be given out on Sunday, June 3, because this was the end of a week; that Weeden was entitled to be paid through the Denver show, which was to terminate on June 10; and that he was entitled to 1 week's vacation pay. Marino said that he did not know anything about the vacation. Marino replied, "I just spoke to Mr. Diehl and that's the way it is." Marino said, "...we don't need [Weeden] for Denver, he's done here as of Saturday night." Vignale replied that as long as Weeden received his pay and his vacation, that was "fine" with him. Management agreed to this arrangement. Doucette was present during this conference, but said nothing. Because Weeden was performing his professional duties while the conference was in progress, Vignale waited until the show was over and then reported to him what had happened.

Thereafter, Weeden told Vignale that Antonelli had said Weeden had to go on to Denver and work out the engagement there. On June 1, Vignale came back to the theater again. Vignale asked Doucette to accompany him in the meeting with Antonelli and Marino. Doucette replied that he did not want to go in because he was getting too deeply involved and was afraid he would be fired. Doucette added, "After we go into LA, they don't need me, they are going to have a run there." Vignale remarked that Doucette was "kidding," and insisted that he attend the meeting. This meeting was attended by Vignale, Doucette, Marino, Antonelli, and (perhaps) Weeden. Vignale asked why he had not been told previously that Weeden would have to work in Denver. Marino replied, "I just got a hold of my New York office and the man has to work in Denver." Vignale replied that he guessed Weeden would have to work in Denver as long as he was being paid for it.

Weeden did not leave the show until the end of the Denver run, at which point he was replaced by the original sound man who had set the show up in New York. When Weeden was paid off he received 1 week's vacation pay. Davis agreed to this payment in order to allay the Union's suspicions, conveyed to him in New York, that the selection of Weeden's discharge date had been affected by a desire to prevent him from accumulating enough service to receive vacation pay in accordance with the recent agreement with the Union.

3. The Doucettes' Discharge.

Davis testified that while the show was in Denver (between June 5 and June 10), "I made my telephone call . . . to find out the availability" of a new carpenter. Davis made this phone call some 6 weeks after the late April meetings during which management allegedly decided to discharge the Doucettes, and from 4 to 9 days after the last Weeden grievance meeting.

Decision.

After the opening night in Los Angeles, on June 12, the Waissmans told either Doucette alone, or a group of touring company members including Doucette, that the show looked "beautiful" or "wonderful." On Sunday, June 17, the first Sunday after the Los Angeles show was hung, Antonelli called Doucette, Sr., into Antonelli's office backstage, closed the door, sat down, and said, "I got to let you and your son go." Doucette said, "You got to be kidding." Antonelli said, "No. I got to do the dirty work. I got to pay you off and your son off." Doucette asked for the reason. Antonelli said, "I don't know. I don't have a reason. I was told to pay you off, to terminate you and your son." Doucette asked, "Why are you terminating my son?" Antonelli replied, "Because he is your son." Antonelli gave Doucette the Doucettes' paychecks, both of which (as required by the Doucettes' employment contracts) included 2 weeks' pay in lieu of notice, and said, "I'm sorry. There's nothing I can do with this. It's out of my hand, it's coming from Mr. Davis." Doucette asked if it would be all right to call Davis in the morning.[19] Antonelli replied, "I wish you would call Mr. Davis and he will tell you the reason." Doucette, Sr., then left Antonelli's office and told Doucette, Jr. (who was then performing his professional duties) that they had been fired and paid off, adding that he "really didn't quite believe it." At the end of the show, Antonelli approached Doucette, Jr., and said, "I'm sorry for what has happened. I am going to miss you and your father."[20]

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[19] The Doucettes were discharged about 10 p.m. Los Angeles time—that is, about 1 a.m. New York time.

[20] My findings in the foregoing paragraph are based on the Doucettes' undenied and credited testimony. Antonelli unexplainedly failed to testify. Davis testified that Antonelli had known "for some time" that the Doucettes would be terminated on June 17, but could not recall when Davis told him this.

On the following day, June 18, Doucette telephoned Davis for an explanation of the discharge action. What Davis said in reply is the subject of conflicting evidence which is discussed hereafter.

On June 19, when the Doucettes returned to the Los Angeles theater to retrieve some personal belongings, Marino approached Doucette, Sr., and asked why Doucette, Jr., was so "mad" at and "bitter" toward Marino. Doucette, Sr., replied that Marino must have had something to do with the discharges. Marino said, "I had nothing to do with it. I just heard about it Sunday afternoon. I was just as surprised as you were. We finally got where we could work together. I just don't believe it."[21]

As required by Union Rules, the individual hired as the new carpenter was paid as such from the time the Doucettes were terminated, although he was unable to join the show for 2 or 3 weeks and the job was actually performed by the local carpenter in the meanwhile. The new carpenter had worked on "bus and truck shows" (smaller versions of large shows), with Davis as general manager, for about 5 years. Davis testified that he had given the Doucettes 2 weeks' pay in lieu of notice (totalling about $1700) because he feared sabotage if they worked out their notice.

The first charge herein was received by Respondent Theatre about June 20 or 22. By letter dated June 26, 1973, addressed to the Board field attorney assigned to the case, Respondents' attorney stated, *inter alia:*

> The two (2) complaining employees were hired for the Touring Company, I believe in Cincinnati, Ohio and toured with the company pursuant to their written con-

[21] My findings in the foregoing paragraph are based on Doucette's undenied and credited testimony. Marino unexplainedly failed to testify.

tract with the Producer. The employees were discharged without cause in California, were paid two (2) weeks salary and furnished transportation as per their contracts.

* * *

In response to your oral inquiry, we must emphatically state that these two employees were dismissed without cause. As stated to you on the telephone, the employer did have suspicion of wrong doing on the part of each employee, but there is absolutely no credible evidence which can be offered in support of this suspicion. The employer and its agents categorically and affirmatively stated that these employees were not discharged "because of their membership and activities" in any union.

All of the officers of Waissman & Fox, Inc., Kenneth Waissman and Edward H. Davis, are presently in London, England and will not return until after July 9th. On behalf of the employer, we agree to submit any or all of these persons having knowledge of the facts for your inquiry here in New York after their return.

Respondents' attorney, who signed this letter and whose office is in New York, testified that when the charge was filed, the Waissmans and Davis were in England; and that when he wrote the letter, "I knew none of the facts and none of the particulars with respect to the charge. I did know that Mr. Doucette had been discharged. I knew he had been discharged pursuant to the terms of a written agreement which authorized his discharge without cause." Counsel did not state the source of the information on which he based this letter.[22]

[22] There is no evidence that Antonelli or Marino, neither of whom testified, was abroad or otherwise unavailable during this period. Smith returned to New York from England 3 days before counsel wrote this letter.

C. *Analysis and Conclusions*

1. Whether Unfair Labor Practices have been Shown

a. *The Reasons for the Doucettes' Discharge*

Doucette testified that when he called Davis on June 18 and asked why he and his son had been discharged, Davis replied that he "was mad at [Doucette] for bringing the IA representative into Cincinnati, that was causing [Davis] troubles. . .he said [Doucette] should have minded [his] own business and [he] should never have got into that part of it." According to Doucette, he then asked, "Why is my son going? He had nothing to do with it. He never attended none of the meetings," and Davis replied, "Because he is your son. . .I was going to fire you three weeks prior, I was going to fire you in Cincinnati, but I needed you for the opening in LA, but now I don't need you." In view of the evidence regarding Doucette's participation in the processing of Weeden's grievance, this statement (if Davis in fact really made it) renders almost unassailable the contention of counsel for the General Counsel that Doucette, Sr., was discharged because Davis resented the help Doucette, Sr., provided the Union and Weeden in support of Weeden's grievance, and that Doucette, Jr., was discharged because of his kinship to Doucette, Sr. Davis, on the other hand, testified that during this conversation Doucette, Sr., asked why he had been given his notice and stated that "this was unexpected and I don't understand," to which Davis replied that "the producers have not been happy for a long time."[23] It is apparent that this alleged statement is inconsistent with the General Counsel's contention regarding

[23] Davis so testified on direct examination. On cross-examination, he testified that he had never told Doucette that the producers were dissatisfied with his work; and that "if" Davis gave Doucette any reason for his termination, ". . . it was a phrase such as general dissatisfaction."

the motive for Doucette, Sr.'s discharge, but furnishes some support for Respondents' principal contention that the Waissmans decided to discharge Doucette, Sr., because they were dissatisfied with his work.[24] Accordingly, highly relevant to resolving this critical clash in the testimony is Respondents' evidence about who decided on the discharges, when the discharge decision was reached, and why it was reached.

Upon analyzing such evidence, and because Doucette, Sr.'s demeanor on the witness stand impressed me much more favorably than Davis', I credit Doucette's version of the conversation.[25] I reached this conclusion notwithstanding my further finding that the Waissmans were seriously concerned (financially, artistically, and emotionally) about the condition of the Toronto show and were annoyed at Doucette's coincidental absence; that Miss Fox conveyed this concern to Waissman and both of them to Davis; and that this concern included (although it extended far beyond) deficiencies within Doucette's jurisdiction.

Thus, Davis' version of the June 18 interview represents that the decision to discharge Doucette, Sr., was made by the Waissmans; and Respondents' witnesses (Davis, the Waissmans, and to some extent Smith) testified that the Waissmans made this decision notwithstanding Davis' advice to the contrary. Further, those witnesses testified that this decision was finalized during a series of conversations which allegedly occurred between April 18 (when the show was in

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[24] Respondents' explanations for the discharge of Doucette, Jr., are discussed *infra*.

[25] I note that Doucette, Sr.'s testimony that Davis tendered kinship as the reason for Doucette, Jr.'s discharge is to some extent corroborated by the uncontradicted evidence that Antonelli had previously given Doucette, Sr., a like explanation.

Toronto) and April 23 (the opening night in Detroit, but, by the time the show reached Detroit, the participants in these conversations were all in New York). Yet, Davis' prehearing affidavit stated, *inter alia:*

> I made the decision to discharge Joseph F. Doucette, Jr. and Joseph F. Doucette. In mid-May, I came to the conclusion that it would be to the best interests of the Grease Company to terminate the employment of both Doucettes. I, at this time, discussed this conclusion with [the Waissmans] and the three of us agreed to terminate their employment as soon as replacements could be found and at a time that the Company would not suffer, namely after the Los Angeles opening. (In mid-May the road show was in Detriot, Michigan.)[26]

[26] When this portion of Davis' affidavit was drawn to his attention at the hearing, he testified, *inter alia,* that the termination decision was made in May. He admitted that he "must have" told the Board agent that "I made" the decision, but added, ". . . in Toronto, the week before this, Mr. Waissman and Miss Fox decided to fire Mr. Doucette and I prevailed upon them to wait so we could discuss it further. So, I made my own decision at that point in Detroit that their wishes were going to prevail." He tendered, as an attempted explanation of the "mid-May" date in the affidavit, that this was a recollection of when the show was in Detroit, which followed Toronto; but he offered no explanation of why he deemed the Detroit location important when the alleged decision was made by management personnel while they were in Cincinnati and (on the date of the Detroit opening) in New York. As an attempted explanation of his statement that "I" decided on the discharges, he testified that he "had a personal dissatisfaction from the very beginning. But I overlooked it constantly because I felt that I had no way—the job was getting done." Davis conceded that he gave the statement in the presence of Respondents' counsel, and that both read it before Davis signed it. I am not satisfied with his purported explanation for the inconsistencies between his sworn testimony and his sworn statement.

There are certain seeming additional inconsistencies between Davis' affidavit and portions of his testimony regarding his hiring authority and his

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Moreover, the reasons tendered by the Waissmans for their alleged decision to discharge Doucette lack plausibility in view of the retention of all other members of the road company, although the credited testimony of production director Smith (called by Respondents) establishes that production stage manager Marino and the other department heads were at least as blameworthy as Doucette for the deficiencies in the Toronto show. The genuineness of these reasons is further drawn into question by the uncontradicted testimony that company manager Antonelli told Doucette that he did not know why Doucette was being terminated and production stage manager Marino told Doucette that he was surprised by the discharges, although Smith and Miss Fox admitted that they had spoken to both men about the deficiencies in the Toronto show—in considerable detail to Marino, and including a discussion with Antonelli about the painting of the scenery. Further, the testimony of Respondents' witnesses leaves Doucette, Jr.'s discharge somewhat in the air. Davis testified that he did not recall discussing Doucette, Jr. during the June 18 conversation with Doucette, Sr., although the circumstances rendered highly probable, to say the least, Doucette, Sr.'s testimony that he asked about the matter. Furthermore, Waissman was the only witness called by Respondent who testified that Doucette, Jr., was even mentioned during the April 23 conference, and Waissman's memory was "very cloudy" about whether a decision was reached that day to terminate the son as well. Moreover, Waissman's testimony is confused if not internally inconsistent, and is also in-

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June 18 conversation with Doucette about the reasons for his discharge. Because Davis was not asked about these possible discrepancies, I do not rely thereon even though counsel for the General Counsel offered these portions of his affidavit into evidence at the request of Respondents' counsel. III A Wigmore on Evidence §§ 1025-1029, pp. 1020-1032 (Chadbourn rev. 1970).

consistent with certain parts of Smith's testimony, regarding Doucette, Jr.'s alleged responsibility for the slowness of the flies, with virtually an eventual admission in the testimony of both witnesses that the production stage manager was the one really at fault. Finally, Davis' admission that his phone call to obtain a new carpenter was made on June 5 or later is difficult to reconcile with the contention that the discharge decision was made as early as April 23, particularly in view of the scarcity of competent road-show carpenters which required Davis to accept a carpenter with "bus and truck" experience only;[27] but creates a logical time sequence assuming (as contended by counsel for the General Counsel) that the discharge decision was motivated by Doucette's participation in the processing of the Weeden grievance over a period ending Friday, June 1.

In short, in view of the foregoing considerations, the witnesses'—demeanor, and the record as a whole, I do not credit Davis' version of his June 18 conversation with Doucette or the following related testimony: Miss Fox's testimony that on April 18 she told Waissman that she could not obtain a definite answer as to when Doucette was expected back[28] and told Davis there were "torn panels" and "panels...that [were] not hung" (*supra* fn. 10); Waissman's testimony that on April 18 Miss Fox told him that "there are things that weren't hung" (*supra* fn. 10) (specifically mentioning the Edsel panel, although Miss Fox did not specifically testify that she then mentioned that panel to Waissman); Davis' testimony that on

[27] During Doucette's April 19 conversation with Miss Fox about the condition of the Toronto show, she remarked that "this was a road show, she didn't want it to be run like a bus and truck show." I infer that the standard of work expected from the carpenter on the latter type of show is lower than from the carpenter on a road show.

[28] Waissman testified, "She said they expect him back tomorrow."

April 18 Miss Fox asked him when Doucette was coming back,[29] that between April 18 and 23 Marino told him that Marino felt he was "fighting" Doucette all the time (see *supra* fn. 14), and that after telling Doucette on May 29 or the morning of May 30 not to get further involved in the Weeden grievance he never learned about Doucette's subsequent participation therein; and the testimony by the Waissmans and Davis that on April 23 they agreed that Doucette, Sr., (and—according to Waissman alone—perhaps Doucette, Jr., as well) would be terminated after the show reached Los Angeles and Davis was told to find a new carpenter.[30] I also discredit Waissman's testimony that on May 17 he told Marino that "we had already decided after that Toronto incident that [Doucette] was going to be replaced," and Smith's testimony that on May 23 or 24 Marino relayed this alleged conversation to him. Waissman's and Smith's testimony in this respect was not corroborated by Marino (who unexplainedly failed to testify) and is inconsistent with the uncontradicted testimony that on June 19 he told Doucette that the discharges were a "surprise" and he had not learned about them until June 17, the day they occurred. I need not and do not determine whether the fabrications of Respondents' witnesses consisted of the testimony that the Waissmans wanted to discharge Doucette, or of the testimony that Davis was unsuccessful in his admitted efforts to induce them not to take such action.

My conclusion that the Doucettes were discharged for the reasons tendered in Doucette's version of Davis' June 18

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[29] This testimony was not corroborated by Miss Fox, who already knew the answer (*supra* fn 28). In any event, I see no reason why she would expect Davis to know.

[30] The Waissmans and Smith testified that no discharge decision was made before Smith left the conference, but Davis testified that the decision was made in Smith's presence.

remarks is further supported by the action of Respondents' counsel in asserting, successively, that the Doucettes were discharged "without cause"; that they were discharged on "suspicion of wrong doing on the part of each employee, but there is absolutely no credible evidence which can be offered in support of this suspicion";[31] that Doucette, Sr., was discharged because of his entries on the so-called "yellow cards" used by the Union to assure that the Local Union had proper notice of the need for local stagehands for the show and that the show used what the Union regarded as a sufficiently large crew (Brief p. 3); and that Doucette, Jr., was discharged in order to enable the new carpenter to select his own flyman (Brief pp. 10-11). Neither Miss Fox, nor Waissman, nor Davis testified that the discharged decisions were in any way so motivated. Indeed, both Davis and Antonelli knew about Doucette's question "yellow card" practice before he began to follow it; Doucette's uncontradicted and credible testimony establishes that management never complained to him about it; Davis did not learn of the Union's objections to this practice until after the alleged April 23 discharge decision; Doucette credibly testified that he believed his practice would save the employer money; there is no evidence that prior to his discharge any member of management thought otherwise; and the uncontradicted evidence establishes that at least in many locations it in fact did so.[32] Moreover, the usual practice is to retain the assistant, because of his familiarity with the show, where the carpenter leaves a show before the end of the run; and Davis failed to explain why he did not do

[31] Because these representations were made in a letter to the Regional Office from Respondents' counsel, they constitute admissions to be held against Respondents. *Steve Aloi Ford*, 179 NLRB 299, 230.

[32] Doucette eventually altered this practice because of the Union's protests.

this.[33] "The Company's vacillation and the multiplicity of its alleged reasons for firing [the Doucettes] render its claims of nondiscrimination the less convincing." *N.L.R.B.* v. *Schill Steel Products, Inc.*, 340 F. 2d 568, 573 (C.A. 5). Accord: *N.L.R.B.* v. *Long Island Airport Limousine Service*, 468 F. 2d 292, 295 (C.A. 2); *Aloi Ford, supra*, 179 NLRB at 230. Assuming *arguendo* that Respondents' counsel has shown justifiable ground for the Doucettes' discharge, "the existence of some justifiable ground for discharge is no defense if it was not the moving cause." *N.L.R.B.* v. *Wells, Inc.*, 162 F. 2d 457, 460 (C.A. 9). Accord: *N.L.R.B.* v. *Great Eastern Color Lithographic Corp.*, 309 F. 2d 352, 355 (C.A. 2), cert. den. 373 U.S. 950.

b. *Whether the Discharges and Davis' Assertions of the Reasons therefore Violated the Act*

(1) Whether Doucette, Sr., was an Employee or was a Supervisor

I have found that Doucette, Sr., was discharged because of his participation, on employee Weeden's behalf, in the processing of the grievance based upon Weeden's discharge; and that employee Doucette, Jr., was discharged because he was Doucette, Sr.'s son. As discussed *infra*, the discharge of employees for these reasons would violate Section 8(a)(1) and (3) of the Act. Further, in response to my inquiry at the hearing, Respondents' counsel conceded that Doucette, Sr., was an employee within the meaning of the Act. Nonetheless,

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[33] Indeed, the assistant sometimes himself obtains the carpenter's job under these circumstances. Davis testified that he did not so promote Doucette, Jr., because he hired the Doucettes as a team and had doubts about the ability of the son, whom he hardly knew, to "deal with men." The practice of giving the carpenter the right to hire his assistant is followed for new shows, not shows which are already running.

during the hearing I concluded that the evidence indicated that Doucette, Sr., might well have been a supervisor within the meaning of Section 2(11) of the Act and, therefore, not an employee within Section 2(3). At my request, the parties have briefed that issue. I conclude that Doucette was in fact a supervisor. *Cf. Primrose Super Market of Malden, Inc.*, 178 NLRB 566, 568-59.[34]

Thus, Doucette, Sr., had the authority, in the interest of the employer and in the exercise of independent judgment, effectively to recommend the hiring of the flyman (the only other carpenter who was a permanent member of the touring company) and in fact induced Davis to hire Doucette, Jr., for that job.[35] The record does warrant the inference, which I draw, that Davis gave weight to Doucette's recommendation partly because Doucette was a highly skilled worker and would have to work with the flyman, and that Doucette selected his son partly because of their blood relationship. However, Doucette's belief that his son was in fact well qualified for the job played a major part both in Doucette's recommendation and in Davis' willingness to hire Doucette, Jr., sight unseen and without (so far as the record shows) any independent investigation whatever. I am not persuaded that

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[34] There is no contention or evidence that either Weeden or Doucette, Jr., was other than a rank-and-file employee. The authority exercised by Doucette, Jr., (who was familiar with the show) with respect to the local men on the "fly floor" (who had never worked on the show before it reached the local theater, and may not have even rigged or hung it) was merely that of a highly skilled with respect to the less skilled worker. See *Dubin-Haskell Lining Corp.* v. *N.L.R.B.*, 375 F. 2d 568, 570-571 (C.A. 4), mod. on reconsideration, 386 F. 2d 306 (C.A. 4), cert. den. 393 U.S. 824.

[35] I would reach the same conclusion even accepting Davis' discredited testimony that he had only recommendatory authority, and that the final authority to hire resided in the Waissmans. Section 2(11) does not provide that the requisite effective recommendation must be made directly to the final hiring authority.

Doucette, Sr., lacked the requisite recommendatory authority by the contention of counsel for the General Counsel that the hiring of the Doucettes was, in effect, a "package deal." The grant or withholding of supervisory powers would ordinarily affect parties' willingness to enter into a contract of employment and the wages of other terms called for therein. See *Setco Well Service Co.*, 171 NLRB 338, 339.

Moreover, Doucette's participation in the decision about how many local carpenters to use in each location to perform the "advance work" and for each step in the hanging, operation, and dismantling of the set constituted participation in the only part of "hiring" the remainder of the carpentry department in which the employer had any voice; the local carpenters were selected by the Local Union. Further, it was Doucette who decided when to call for local carpenters to perform the "advance work." While I have found no cases on the point, I am inclined to think that Doucette's authority with respect to the hiring of the local carpenters constituted authority, in the interest of the employer and in the exercise of independent judgment, effectively to recommend hiring within the meaning of Section 2(11).

Furthermore, Doucette was the only member of the touring company who was present when he and the carpenters sent out by the Local Union in the area for an "advance call" hung the rigging in preparation for the show's next intercity move. In addition, he was the head of the carpentry department, was the "boss" and "in charge" of the local carpenters, and told them how to take the scenery off the trucks and where to put it. It was Doucette who decided how to put the show into the various theaters, each of which was different. I conclude that Doucette also had the authority, in the interest of the employer and in the exercise of independent judgment, responsibly to direct the employees in the carpentry department.

(2) Doucette, Sr.'s Discharge

It is hornbook labor law that by virtue of Sections 2(3) and (11) and 14(a) of the Act, supervisors do not possess the protection which the statute affords to employees. However, it is clear that action detrimental to their interest may nonetheless constitute an unfair labor practice where it infringes the statutory rights of employees. Thus, it has been held that an employer may not lawfully discharge or otherwise discipline a supervisor because he refused to commit unfair labor practices against employees, or because he testified at a Board proceeding or at a proceeding where a union was processing employee grievances, or in order to punish the protected activity of an employee who was the supervisor's relation, or in order to provide a pretext to terminate employees for protected activity.[36] It may well be that such conduct is unlawful whether or not the employees knew about it.[37] However, for the purposes relevant here, I deem it significant that such cases have frequently if not usually relied on the theory, *inter alia,* that such treatment of supervisors would likely put employees in fear that like conduct by them would lead to a like retaliation.[38]

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[36] See, *e.g.*, the cases cited *infra* fns. 38, 46. See also, *Ebasco Services, Inc.*, 181 NLRB 768, 769-770; *Pioneer Drilling Co.*, 162 NLRB 918, 923, enfd. in material part, 391 F. 2d 961, 962-963 (C.A. 10); *Dewey Brothers, Inc.*, 187 NLRB 137, 142, enfd. 80 LRRM 2112 (C.A. 4).

[37] See *Oil City Brassworks* v. *N.L.R.B.*, 357 F. 2d 466, 470-472 (C.A. 5); cf. *General Engineering Co.* v. *N.L.R.B.*, 311 F. 2d 570, 573-574 (C.A. 9).

[38] See, *e.g.*, *Local No. 207, International Association of Bridge, Structural and Ornamental Iron Workers* v. *Perko*, 373 U.S. 701, 707; *Better Monkey Grip Co.*, 115 NLRB 1170, 1170-1171 [enfd. 243 F. 2d 836 (C.A. 5), cert. den. 353 U.S. 864]; *Talladega Cotton Factory, Inc.*, 106 NLRB 295, 295-297 [enfd. 213 F. 2d 209, 215-217 (C.A. 5)]; *Jackson Tile Mfg. Co.*, 122 NLRB 764, 767 [enfd. 272 F. 2d 181 (C.A. 5)]; *Consolidated Foods Corp.*, 165

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Counsel for the General Counsel contends in his brief, "The test is whether the discharge of the supervisor restrains and coerces nonsupervisory employees." However, counsel at the very least over-simplifies the problem. As the Fifth Circuit pointed out in *Oil City Brass Works, supra,* 357 F. 2d at 470:

> Any time an employee, be he supervisor or not, is fired for union activity rank-and-file employees are likely to fear retribution if they emulate his example. But . . . if the fear instilled in rank-and-file employees were used in order to erect a violation of the Act, then any time a supervisor was discharged for doing an act that a rank-and-file employee may do with impunity the Board could require reinstatement. Carried to its ultimate conclusion, such a principle would result in supervisory employees being brought under the protective cover of the Act. Congress has declined to protect supervisors and the courts should not do by indirection what Congress has declined to do directly.

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NLRB 953, 956-959 [mod. 403 F. 2d 662 (C.A. 6)]; *Inter-City Advertising Company of Greensboro, N. C., Inc.*, 89 NLRB 1103, 1106-1108, 1133 [mod. 190 F. 2d 420 (C.A. 4)]; *Modern Linen & Laundry Service, Inc.*, 116 NLRB 1974, 1975, 1986-1987; *Golub Bros. Concessions*, 140 NLRB 120, 127; *Brookside Industries, Inc.*, 135 NLRB 16, 25, enfd. in mat. part 308 F. 2d 224, 228 (C.A. 4); *Leas & McVitty, Inc.*, 155 NLRB 389, 390, 398-399, enf. den. 384 F. 2d 165 (C.A. 4); *Gainesville Publishing Co., Inc.*, 150 NLRB 602, 626-627; *Dal-Tex Optical Co., Inc.*, 131 NLRB 715, 730-731 [enfd. 310 F. 2d 58, 62 (C.A. 5)]; *Oil City Brass Works*, 147 NLRB 627, 629-630 [enfd. 357 F. 2d 466 (C.A. 5)]; *Permian Corp.*, 189 NLRB 860, 864 [enfd. 457 F. 2d 512 (C.A. 5)]; *Thermo-Rite Mfg. Co.*, 157 NLRB 310, 322 [enfd. 406 F. 2d 1033, 1035 (C.A. 6)]; *Vail Mfg. Co.*, 61 NLRB 181, 182-183, enfd. 158 F. 2d 664, 666-667 (C.A. 7), cert. den. 331 U.S. 835 (under original Act). Brackets around court citations indicate that the court either rejected or failed to discuss the theory that the questioned conduct instilled fear in rank-and-file employees.

Nonetheless, I do not conclude from this reasoning that under no circumstances can the Board find unlawful, because of the fear instilled in rank-and-file employees of like retaliation for like conduct, the discharge or disciplining of supervisors for conduct protected by Section 7 where engaged in by employees. Rather, I conclude that the Act protects the employees against fears of retribution derived from such employer conduct (just as it protects employees from fears of retribution derived from discrimination against their fellows) so long as this result is reconcilable with other statutory ends, including the further congressional purpose of permitting employers to discharge or otherwise punish supervisors for engaging in Section 7-type conduct. The property of this approach is suggested by the interpretation afforded Section 8(b)(1)(A), which prohibits unions from invading the rights of employees under Section 7 in a fashion comparable to the activities of employers prohibited by Section 8(a)(1),[39] and which was added to the Act at the same time as Section 14(a) and related provisions. In considering whether Section 8(b)(1)(A) was breached by *union* conduct, whose evaluation need not take into account the *employer's* privilege to punish supervisors for Section 7-type conduct, the Board and the courts have uniformly found a union unfair labor practice where the impact on rank-and-file employees of a union's treatment of supervisors had as a natural consequence restraint and coercion of employees with respect to their Section 7 rights.[40] Furthermore, the Board held in *A. O. Smith*

[39] *International Ladies' Garment Workers' Union* v. *N.L.R.B. (Bernhard-Altmann)*, 366 U.S. 731, 738.

[40] See, *e.g.*, *International Union of Operating Engineers, Local 18, AFL-CIO (C. F. Braun Co.)*, 205 NLRB No. 146 (ALJD pp. 32-33); *N.L.R.B.* v. *Local 140, United Furniture Workers (Brooklyn Spring Corp.)*, 233 F. 2d 539, 540-541 (C.A. 2); *N.L.R.B. v. International Woodworkers of America (W. T. Smith Lumber Co.)*, 243 F. 2d 745 (C.A. 5). See also, *New Power Wire & Electric Co.* v. *N.L.R.B.*, 340 F. 2d 71, 72-73 (C.A. 2); *N.L.R.B* v. *Local 282, International Brotherhood of Teamsters (Lizza and Sons)*, 412 F. 2d 334, 337-338 (C.A. 2), cert. den. 396 U.S. 1038.

Corp., 132 NLRB 339, 341-342, 393-394, not only that a union violated Section 8(b)(1)(A) by causing a supervisor's demotion to rank-and-file status because of dissident union activity (thereby illustrating to the rank-and-file employees their likely fate if they engaged in like conduct), but also that the employer violated Section 8(a)(2) and (1) by effecting such demotion because of the coercive effect of this action upon employee rights. While finding that the evidence failed to support the Board's conclusion as the reasons for causing and effecting the demotion, the court of appeals agreed with the Board that if the supervisor's "demotion was an unfair labor practice and if 'the employees should regard [his] demotion as symbolic of what would happen to them if they, in the exercise of their statutory rights, were to oppose [the incumbent union president] and his ruling group,' the Board has jurisdiction." 343 F. 2d 103, 111-112 (C.A. 7). Moreover, the Board has held that the discharge of an alleged supervisor violated Section 8(a)(1) because "motivated by a desire to discourage union activities in general among the employees, rather than a concern that she, as an asserted supervisor, had signed a union card." *Heck's Inc.*, 170 NLRB 178, 184 fn. 8.[41] See also, *Fairview Nursing Home*, 202 NLRB No. [illegible] (sl. op., p. 2 fn. 2; ALJD p. 15 fn. 34). Further, the Board held a supervisor's discharge to violate Section 8(a)(1) because he "spoke for the striking body shop employees and, by his discharge, Respondent effectuated its decision to close the body shop operation because of the employees' union adherence. . . .[His] discharge. . .was 'an integral part of a pattern of conduct aimed at penalizing employees for their union activities.' " *Krebs and King Toyota, Inc.*, 197 NLRB

[41] The court of appeals enforced the Board's order as to her on the ground that she was a rank-and-file employee, without reaching the ground adverted to in the text. *Food Store Employees Union, Local 347, Amalgamated Meat Cutters* v. *N.L.R.B.*, 418 F. 2d 1177, 1181 (C.A.D.C.).

No. 74 (sl. op. p. 4, fn. 4). Moreover, in finding that an employer did not violate Section 8(a)(1) by discharging a supervisor for union activity and sending rank-and-file employees a letter about the matter, the Board relied on the fact that the letter gave the employees assurance against reprisal, and that they had no reasonable ground to fear a similar fate if they engaged in union activity. *Texas Gulf Sulphur Co.*, 163 NLRB 88, 93-94.

The reasoning of the foregoing cases, taken as a whole, leads me to conclude that the discharge of or other reprisals directed against a supervisor for engaging in conduct protected in an employee violates Section 8(a)(1) of the Act if (1) under all the circumstances, such punishment tends to lead rank-and-file employees reasonably to fear that the employer will punish them for engaging in like conduct; *and* (2) the employer has failed to take reasonably and timely steps to reassure his rank-and-file employees that they will not be punished for such conduct. This second requirement enables employers who have made such efforts at reassurance to discipline supervisors for Section 7-type activity even though the fact of the punishment and (perhaps) circumstances beyond the employer's control nonetheless tended to put the employees in fear. In my view, such an approach effects a proper accommodation between employee rights and the Congressional policy withholding from supervisors the protection afforded by Section 7.[42]

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[42] In so concluding, I am aware that a number of cases have used language which might well point to an absolute privilege by employers to discharge supervisors for concerted or union activity and to enjoy the benefits of any consequent chilling effect on rank-and-filers' like activity. Among cases using language suggestive of this result are: *Oil City Brassworks, supra.* 357 F. 2d at 468, 470; *United Painting Contractors*, 184 NLRB No. 19 (TXD pp. 7-8), affd. 441 F. 2d 266 (C.A. 4); *Texas Co.*, 93

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On the basis of the foregoing principles, I conclude that supervisor Doucette, Sr.'s discharge because of his participation in the Union's processing of employee Weeden's grievance violated Section 8(a)(1) because it would tend to instill in rank-and-file employees the fear that they too would be discharged or otherwise punished if they engaged in like conduct. There is no question that such conduct by rank-and-file employees constitutes protected union and concerted activity for which employees may not lawfully be discharged.[43] Nonetheless, management frankly told Doucette, Sr., that he was being discharged for such activity, although it must have anticipated that he would at the very least relay this to employee Doucette, Jr., who was his son and the reasons for whose own discharge were interwoven with those for his father's.

Moreover, management made no effort whatever to advise any of the rank-and-file employees that Doucette, Sr., had been subjected to discharge for this reason solely because of his supervisory status, and that management recognized rank-

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NLRB 1358, 1369-1370 (dissenting opinion), enf. den. 198 F. 2d 540, 544 (C.A. 5); *El Cononazo Supermarket, Inc.*, 171 NLRB 83, 89-91; *N.L.R.B.* v. *Fullerton Publishing Co.*, 283 F. 2d 545, 550 (C.A. 9); *Sopps, Inc.*, 175 NLRB 296, 297, 305-306; *National Freight, Inc.*, 154 NLRB 621, 622. However, in none of these cases does it appear that the Board or the court was asked to evaluate the propriety of bringing into play the balancing principles set forth in the text. Further, the law as it has thus evolved does not render the discipline of a supervisor for union or concerted activity unlawful, without more; but the facts recited in most if not all of these opinions fail to suggest the existence of considerations, other than the mere fact of the discipline, which would tend to create reasonable employee fear.

[43] *Morrison-Knudsen, Inc.*, 149 NLRB 1577, enfd. 358 F. 2d 411 (C.A. 9); *Interboro Contractors, Inc.*, 157 NLRB 1295, enfd. 388 F. 2d 495 (C.A. 2); *United Engineering Co.*, 163 NLRB 81, enfd. 401 F. 2d 910 (C.A. 9), cert. den. 393 U.S. 1084.

and-file employees' right to engage in similar conduct without fear of employer reprisal. Rather, management's concomitant discharge of Doucette, Jr., a statutory employee, both underlined the threat advanced by his supervisory father's discharge and blurred any distinction between their respective positions. Indeed, the record shows that management did not subjectively regard Doucette, Sr., as having any status other than that of a rank-and-file employee. The management representatives, at the grievance meetings tacitly accepted him as a representative of the Union and of employee Weeden. General manager Davis testified that after learning about Doucette, Sr.'s participation in the first Weeden grievance meeting, Davis in effect told Doucette, Sr., that he did not act improperly in advising Weeden of his rights. The Union's representative testified that he had brought Doucette, Sr., to the grievance meeting to act as "steward." Each of the Doucettes is a member of the same Union Local; and was party to the same form contract, which is the only contract "recognized" by the Union, was drafted by the Union, contains various provisions purporting to protect the Doucettes' union membership rights and the Union's own interests, and includes a provision for an arbitrator appointed by the Union. Furthermore, Respondents' counsel conceded at the hearing that Doucette, Sr., was an employee within the meaning of the Act. It was only after I raised a question during the hearing as to his status that any of the parties concerned became aware of the possibility that Doucette, Sr., was a supervisor rather than an employee. Accordingly, so far as both the impact of and the motives for the discharges are concerned, this case is in reality precisely the same as if Doucette, Sr., had been an ordinary employee.[44]

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[44] It is true that Doucette, Sr.'s supervisory status might render his employer answerable for an unfair labor practice based on certain kinds of

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Decision.

For the foregoing reasons, I conclude that the discharge of Doucette, Sr., because of his activity in connection with the Weeden grievance violated Section 8(a)(1) of the Act. However, because of Doucette, Sr.'s supervisory status, I conclude that his discharge did not violate Section 8(a)(3). *Fairview Nursing Home, supra,* 202 NLRB No. 49 (sl. op. p. 2 fn. 2).

(3) Doucette, Jr.'s Discharge

I have found that Doucette, Jr., was discharged because of the union activity of his father, Doucette, Sr. As counsel for the General Counsel points out, a number of cases have found discharges to be unlawful where motivated by the union activity of relatives. Some of these cases appear to find the discharge unlawful on the ground that the union activity of a particular individual led the employer to suspect that his relatives were similarly active or were receptive to organizational efforts, and to discharge them on that suspicion.[45] However, on the facts of this case, it would be speculative to suppose that management discharged Doucette, Jr., because his kinship with his father led management to fear that, like his father, he would assist employees in processing grievances if the occasion arose. Other cases find the discharge unlawful on the theory that the discharge of one was a means of punish-

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union activity which would be protected in an employee. However, I am satisfied that Section 8(a) (2) does not require an employer to bar a first-line supervisor from the degree of union activity engaged in by Doucette, Sr. See *National Gypsum Co.,* 139 NLRB 916, 920, 921. Moreover, in the instant case management did not refuse to discuss the grievance so long as the conference included Doucette, Sr.; rather, management did discuss the grievance and then discharged him for the grievance activity in which it had previously acquiesced.

[45] See, *e.g., Everett L. Harper,* 169 NLRB 320, 325; *Washington Forge Inc.,* 188 NLRB 90, 97.

ing the other for his own union activity.[46] However, this theory assumes that the latter's union activity was protected by Section 7, whereas Doucette, Sr.'s union activity was not so protected.

Guidance here, however, is provided by *Golub Brothers, supra,* 140 NLRB at 127-128, and by *Consolidated Foods, supra,* 165 NLRB at 959. Both these cases held that the discharge of a supervisor by reason of the union activities of the supervisor's employee relative violated the Act because such a discharge could lead the employees reasonably to fear that they would be discharged if they continued to support the union. A *fortiori,* such a coercive result would obtain where, as here, the supervisor's union activities led not only to his own discharge, but to the discharge of his employee relative as well.

Accordingly, I conclude that the discharge of employee Doucette, Jr. because of the union activities of supervisor Doucette, Sr., violated Section 8(a)(1) and (3) of the Act.

(4) The Statement of the Reasons for the Doucettes' Discharge

I have found that supervisor Doucette, Sr.'s discharge for union activity, and employee Doucette, Jr.'s discharge because of their kinship, violated the Act because their discharge could lead the employees reasonably to fear that they would be discharged if they engaged in like conduct. From this it follows that general manager Davis' statement that these were the reasons for the discharges, made to supervisor Doucette, Sr. but under circumstances which would lead

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[46] See, *e.g., Wipo, Inc.,* 197 NLRB No. 11 (TXD pp. 15-16); *Owens-Corning Fiberglass Corp.,* 146 NLRB 1492, 1495; *Marathon Electric Mfg. Corp.,* 106 NLRB 1171, 1179-1180, affd. 223 F. 2d 338 (C.A.D.C.), cert. den. 350 U.S. 981.

Davis to anticipate that the explanation would be relayed to at least employee Doucette, Jr., violated Section 8(a)(1) because that statement expressed in words the same threat which the discharges expressed in conduct.

c. *The Extent to which Respondent Theatre is Answerable for the Unfair Labor Practices Found*

Respondents conceded at the hearing and in their answer to the amended complaint that Respondent Grease occupied employer status with respect to the Doucettes and is answerable for any unfair labor practices found herein. Moreover, Respondents conceded at the hearing, as did Respondent Theatre in the answer to the original complaint, that Respondent Theatre is Respondent Grease's agent. Section 2(2) of the Act defines the term "employer" as including "any person acting as an agent of an employer, directly or indirectly"; while Section 8(a) states that it shall be an unfair labor practice for an "employer" to engage in the conduct therein described. Accordingly, Respondent Theatre's conceded status as Respondent Grease's agent is sufficient to warrant its inclusion in the cease-and-desist and notice-posting parts of the order herein.[47]

However, Respondents denied in their answer to the amended complaint the allegation therein that they occupied joint-employer status with respect to the Doucettes. While neither of the post-hearing briefs couches on the issue, its resolution may affect both the breadth of the order against Respondent

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[47] *Marriello Fabrics, Inc.*, 149 NLRB 333, 346; *Cache Valley Dairy Association*, 103 NLRB 280.

Theatre[48] and whether it is to be named in the backpay order.[49]

I conclude from the record as a whole that Respondent Theatre occupied (with Respondent Grease) joint-employer status with respect to the Doucettes. Davis, who was admitted in the complaint to be an agent of Respondent Grease, was employed by (and, indeed, an officer of and stockholder in) Respondent Theatre; and was (so far as the record shows) the only person connected with Respondent Theatre who provided any services to Respondent Grease. Under these circumstances, Respondents' admission that Respondent Theatre was an agent of Respondent Grease amounts to an admission that Davis was an agent of Respondent Theatre. Accordingly, Respondent Theatre had and exercised, through Davis, the power to hire and fire the Doucettes and to promise and give them wage increases.[50] Further, the unfair labor practices herein were committed in the exercise of this discharge power, and were motivated by Doucette, Sr.'s ac-

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[48] *Omaha Neon Sign Co.*, 170 NLRB 1385, 1391; *West Coast Casket Co.*, 192 NLRB 624 fn. 2, mod. 469 F. 2d 871 (C.A. 9).

[49] *Kartarik, Inc.*, 111 NLRB 630 fn. 2, enfd. 227 F. 2d 190 (C.A. 8); *cf. Senco, Inc.*, 177 NLRB 882, 895.

[50] While I accept Davis' testimony that he signed Doucette, Jr.'s contract (naming Respondent Theatre as employer) through oversight, Doucette, Sr.'s action in making the entry after discussing at least his own employment with Davis, and Doucette, Sr.'s testimony that he "assumed" Respondent Theatre was the employer, evidence that to applicants, Respondent Theatre possessed the indicia of an employer. Moreover, Doucette, Sr.'s action in filing the original charge herein against Respondent Theatre alone (and not naming Respondent Grease until after Respondent Theatre disclaimed employer status in the answer to the original complaint), together with Davis' admission that laid-off employees seeking unemployment compensation frequently regarded Respondent Theatre rather than Respondent Grease as their employer, indicates that Respondent Theatre also appeared to employees who had actually worked in the *Grease* company as constituting their employer.

tivity in connection with a grievance settled (through Davis) by Respondent Theatre. Accordingly, I conclude that Respondent Theatre occupied joint-employer status with Respondent Grease for purposes of this case, and is answerable for the unfair labor practices found.[51]

CONCLUSIONS OF LAW

1. Respondents are each engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent The Grease Company is an employer within the meaning of Section 2(2) of the Act.

3. For purposes of this case, Respondent Theatre Now, Inc., occupies joint-employer status with and is an agent of Respondent The Grease Company, and is an employer within the meaning of Section 2(2) of the Act.

4. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada and Local 381 of that organization are both labor organizations within the meaning of Section 2(5) of the Act.

5. Joseph F. Doucette, Sr., is a supervisor within the meaning of Section 2(11) of the Act, and is not an employee within the meaning of Section 2(3).

6. By discharging Joseph F. Doucette, Sr., under circumstances constituting interference with, restraint of, and coercion of employees in the exercise of their statutory rights, Respondents have violated Section 8(a)(1) of the Act.

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[51] *West Texas Utilities Co.*, 108 NLRB 407, 413-414, enfd. 218 F. 2d 824 (C.A. 5), cert. den. 349 U.S. 953; *Basic Management, Inc.*, 104 NLRB 1038, 1039-1041; *Fox Midwest Amusement Corp.*, 98 NLRB 699, 718; *May Dept. Stores Co.*, 59 NLRB 976, 986-987, 992, 1043-1045, mod. 154 F. 2d 533 (C.A. 8), cert. den. 329 U.S. 725.

7. By discharging Joseph F. Doucette, Jr., Respondents have interfered with, restrained, and coerced employees in the exercise of their statutory rights, in violation of Section 8(a)(1) of the Act; and have discriminated in regard to tenure of employment to discourage membership in a labor organization, in violation of Section 8(a)(3).

8. By stating the reasons for such unlawful discharges, under circumstances where such statements were likely to be relayed to employees, Respondents have violated Section 8(a)(1) of the Act.

9. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6)(7) of the Act.

10. Respondents' discharge of Joseph F. Doucette, Sr., did not violate Section 8(a)(3) of the Act.

THE REMEDY

Having found that Respondents have violated the Act in certain respects, I shall recommend that they cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act. While I see no reason to anticipate that Respondent Theatre will engage in similar unfair labor practices in connection with shows managed by its personnel other than Davis, the absence of credible evidence that the unlawful discharges herein were decided on by anyone connected with Respondent Grease other than Davis leads me to anticipate that Davis may engage in like unlawful conduct when managing shows other than *Grease*. Accordingly, I shall recommend that Respondent Theatre cease and desist from like or related conduct in connection with shows other than *Grease*, where Davis is employed in connection with those shows.

I shall also recommend that Respondent Grease offer reinstatement to the Doucettes, and that Respondent Theatre (which has no power to make such an offer over Respondent Grease's objection) request Respondent Grease in writing, with a copy to the Doucettes, to make such an offer. The Doucettes shall be made whole for any loss of earnings they may have suffered by reason of their unlawful discharge, by payment to them of a sum of money equal to that which they normally would have earned from the date of discharge to the date of a valid offer of reinstatement less their net earnings during this period, to be computed in the manner described in *F. W. Woolworth Co.*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716. Respondents shall be jointly and severally liable for the backpay which is attributable to the period prior to Respondent Theatre's request that Respondent Grease reinstate the Doucettes, plus 5 days thereafter. Respondent Grease shall be solely answerable for any additional backpay.[52] I shall also recommend that Respondents post appropriate notices.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[53]

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[52] This division of liability may be academic herein, because Respondents' counsel stated on the record that Respondent Grease had undertaken to hold Respondent Theatre harmless and is financially capable of doing so. However, the inclusion of Respondent Theatre in the backpay order does afford the Doucettes some additional financial security. Moreover, should this case eventually be considered by the Board, it may constitute a precedent for a case involving a show less successful than *Grease*.

[53] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

ORDER

Respondent The Grease Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise taking adverse action against any supervisor under circumstances constituting interference with, restraint of, or coercion of employees in the exercise of their rights under Section 7 of the Act.

(b) Discharging or otherwise taking adverse action against any employee, where such action interferes with, restrains, or coerces employees in the exercise of their rights under Section 7 of the Act.

(c) Discouraging membership in International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 381 of that organization, or any other labor organization, by discharge or any other discrimination in regard to hire or tenure of employment or any term or condition of employment.

(d) Stating the reasons for discharges which were violative of the Act, under circumstances where such statements are likely to be relayed to employees.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Offer Joseph F. Doucette, Sr., and Joseph F. Doucette, Jr., reinstatement to their former jobs, and make them whole for any loss of pay suffered by reason of their discharge in the manner set forth in the section of this Decision entitled "The Remedy."

Respondent Theatre Now, Inc., its officers, agents, successors, and assigns, shall:

1. In connection with the show *Grease*, or any other show where Edward H. Davis is employed, cease and desist from:

(a) Discharging or otherwise taking adverse action against any supervisor under circumstances constituting interference with, restraint of, or coercion of employees in the exercise of their rights under Section 7 of the Act.

(b) Discharging or otherwise taking adverse action against any employee, where such action interferes with, restrains, or coerces employees in the exercise of their rights under Section 7 of the Act.

(c) Discouraging membership in International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 381 of that organization, or any other labor organization, by discharge or any other discrimination in regard to hire or tenure of employment or any term or condition of employment.

(d) Stating the reasons for discharges which were violative of the Act, under circumstances where such statements are likely to be relayed to employees.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Make a written request to Respondent The Grease Company to offer Joseph F. Doucette, Sr., and Joseph F. Doucette, Jr., reinstatement to their former jobs; provide the Doucettes with a copy of that request; and make them whole for any loss of pay suffered by reason of their discharge in the

manner set forth in the section of this Decision entitled "The Remedy."

Respondent Theatre Now, Inc., and Respondent The Grease Company, their officers, agents, successors, and assigns, shall:

1. Preserve and, upon request, make available to the Board, or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, as well as all other records necessary or useful in analyzing and computing the amount of backpay due under the terms of this Order.

2. Post at their offices and places of business, and in the theater or theaters where they or either of them are putting on the musical comedy *Grease*, copies of the attached notice marked "Appendix."[54] Copies of said notice on forms provided by the Regional Director for Region 31, after being duly signed by the Respondents' representatives, shall be posted by Respondents immediately upon receipt thereof and be maintained by them for 60 consecutive days thereafter in places conspicuous to employees, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

3. Notify the Regional Director for Region 31, in writing, within 20 days from the receipt of this Decision what steps have been taken to comply herewith.

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[54] In the event that the Board's Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

It is also ordered that the complaint be dismissed insofar as it alleges that Respondents' discharge of Joseph F. Doucette, Sr., violated Section 8(a)(3) of the Act.

Dated at Washington, D. C.

NANCY M. SHERMAN
Nancy M. Sherman
Administrative Law Judge

APPENDIX.

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a trial in which all parties had the opportunity to present their evidence, it has been decided that we violated the law by firing Supervisor Joseph F. Doucette, Sr., and his son, employee Joseph F. Doucette, Jr., under circumstances which would lead employees to believe that they too would be discharged if they or their kin engaged in grievance or other union activity. We have been ordered to post this notice. We intend to carry out the order of the board and abide by the following:

> WE WILL NOT fire any supervisor or employee under circumstances which would lead our employees to believe that they too will be discharged if they or their kin engage in grievance or other union or protected concerted activity.

WE WILL NOT convey the message to employees that supervisors or employees have been discharged for this reason.

THEATRE NOW, INC. will ask The Grease Company to reinstate, and The Grease Company will offer to reinstate, Joseph F. Doucette, Sr., and Joseph F. Doucette, Jr.

WE WILL make Joseph F. Doucette, Sr., and Joseph F. Doucette, Jr., whole for loss of pay, with interest, owing to their discharge.

Our employees are free to join or assist International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada and its Local 381, or any other union, including participation in grievance proceedings, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection. Our employees are free to refrain from any or all such activities except to the extent that their rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the National Labor Relations Act.

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of these rights.

THE GREASE COMPANY
(Employer)

THEATRE NOW, INC.
(Employer)

Dated ..... By .....
(Representative) (Title)

Excerpts of Stenographic Transcript of Testimony at Hearing of September 19, 1973.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 12100, 11000 Wilshire Blvd., Los Angeles, Calif. 90024 (Tel. No. 213-824-7357).

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[1] **Excerpts of Stenographic Transcript of Testimony at Hearing of September 19, 1973.**

BEFORE THE NATIONAL LABOR RELATIONS BOARD
Thirty-first Region

In the Matter of:

THEATRE NOW, INC. and THE GREASE COMPANY,

and

JOSEPH F. DOUCETTE, SR., an Individual.

Case No. 31-CA-3825.

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26 Federal Plaza,
New York, New York,
Wednesday, September 19, 1973.

Pursuant to notice, the above-entitled matter came on for hearing at 11:15 o'clock a.m.

Excerpts of Stenographic Transcript of Testimony at Hearing of September 19, 1973.

Before:

Hon. Nancy M. Sherman, Administrative Law Judge.

Appearances:

Jay R. Pollack, Esq., 11000 Wilshire Blvd., Los Angeles, California, Region Thirty-one, appearing on behalf of the General Counsel.

Joel Arnold, Esq., Blumenthal, Barandes, Bass, Matson & Arnold, Esqs., 18 East 48th Street, New York, New York, appearing on behalf of the Respondents.

[3] PROCEEDINGS

* * *

[7] Mr. Arnold: If your Honor please, we intend to respond to this claim by showing that these two employees were employees hired under a written contract which gave to the employer the absolute right to discharge without cause.

That these employees in fact, at the time of their discharge, were not given any stated given cause or advised. They were discharged for all intents and purposes without cause. The contract so allows.

We will show in answer to the allegation, that perhaps the allegation as I understand it, is that although the employer had the right to terminate without cause, that does not abrogate the employer's obligations under the Act and that if, in fact, the sole reason for the discharge was their union activities or whatever other facts the testimony may bring out, then that, in fact, may be a violation of the Act. We will show that there was no violation of the Act.

That, in fact, they were terminated without cause and if we're put to the test, we can show that there was cause, that there was reason for their discharge, adequate [8] reason and valid reason. We will also show that the decision to terminate these employees was made a long, long time before the alleged incident concerning another employee and the union activity ever occurred.

Judge Sherman: Why were they terminated?

Mr. Arnold: Now we're going into the heart of it.

They were terminated pursuant to a contractual right to terminate without cause.

Judge Sherman: That may be a justification under some circumstances for their termination, but the existence of the contract certainly was not the reason of their termination. Why were they terminated?

Mr. Arnold: Inepitude.

Judge Sherman: Would you care to spell it out?

Mr. Arnold: Were it not for the Act which says that an employer may not do certain prescribed things, were it not for that Act and this allegation, are you saying to me, and this is academic, that I must justify a termination where I have the right to terminate without cause?

Judge Sherman: Well, it seems to me that that's not only an academic discussion, but an immaterial discussion. We don't have a breach of contract suit here.

Mr. Arnold: That's correct, your Honor.

Judge Sherman: The General Counsel contends that [9] they were discharged in whole or in part because of the senior Doucette's union activity. Employers usually don't discharge employees without some reason or other. Whether it would be sufficient to justify his discharge in a moral sense is another question.

What was the reason—

Mr. Arnold: I think you put your finger on it, your Honor. We don't have a breach of contract here, your Honor. We have the question of only whether or not the discharge was caused on the part of the employer or by an action of the employer which is in derogation of the Act and we'll show that we did have sufficient cause to discharge these employees.

Judge Sherman: Do you claim their discharge was motivated by the company's belief that they were inept?

Mr. Arnold: Inept and not good employees. There are so many things that we'll show, your Honor, that led to the decision, that it would be silly for me to characterize them now. We'll show all of the things that came into bear when the decision to terminate was made and the decision to terminate these employees was made by management long before the alleged incident.

Judge Sherman: Mr. Arnold, I am a little puzzled by the amended answer filed here. The answer to the amended complaint here denies paragraph 8 of the amended [10] complaint.

Mr. Arnold: Yes.

Judge Sherman: The answer to the original complaint which was filed by Theatre Now admitted that allegation to some extent and it seems to me that you have admitted it in your argument.

Mr. Arnold: Your Honor, what has happened here is that the original complaint was an allegation only against Theatre Now. The amended complaint added as a respondent the Grease Company. The amended complaint was at my urging. It's our position here that the proper party here is the Grease Company. Theatre Now is merely an agent for the Grease Company.

Excerpts of Stenographic Transcript of Testimony at Hearing of September 19, 1973.

In reading paragraph 8, it relates to the respondent and I was denying it because I denied that the respondents, plurally, Theatre Now, had anything to do with the discharge.

Judge Sherman: But you are admitting that Grease Company did discharge the employees on that date and the remaining allegations of paragraph 8 go only to Grease?

Mr. Arnold: The Grease Company which is a New York limited partnership.

Judge Sherman: Your answer to the original complaint seemed to take the position that Grease Company was a principal of Theatre Now. Am I to infer from that that [11] Theatre Now is the agent of Grease Company?

Mr. Arnold: That's right, your Honor.

Judge Sherman: Assuming for the sake of argument, that Theatre Now is an agent of Grease Company, would it not be possible nonetheless to find that Theatre Now has violated the Act, the statute as I recall forbids certain conduct by an employer or its agents.

Mr. Arnold: I recognize what the statute says, your Honor. Theatre Now, Inc. is an agent. Theatre Now, Inc. was hired by the Grease Company to act as its corporate general manager for the road production of the play called "Grease".

Theatre Now merely fulfills an administrative function. The principals of Theatre Now are not related in any way, manner or form, to the principals of Grease Company.

The principals were upset that their company was charged with an unfair labor practice. I appear for Grease Company and there was an agreement that they would defend them and hold them harmless.

Theatre Now, Inc. wishes to take the position that it was not the employer and that it was not guilty of anything. Theatre Now was carrying out the instructions of the Grease Com-

pany. Theatre Now had no determination; it had no part in the determination of the discharge of these [12] employees. It was following through with the instructions of the principals of the Grease Company.

Judge Sherman: Assuming that the evidence showed that Theatre Now in carrying out the instructions of the Grease Company discharged or advised the Doucettes that they were discharged and so advised them with knowledge that Grease's termination had been made for unlawful reasons, would you say that Theatre Now would not be answerable under the Act?

Mr. Arnold: Until a particular point in the hypothetical question, I would have agreed with you, but saying that Theatre Now knew what it was doing was an illegal act, I would say it would have to be guilty of the illegal act. Anybody who commits a crime knowing that they are doing something illegal, is guilty.

Judge Sherman: Assuming, still *arguendo,* that the record showed this, is it your position that as far as the Board's order is concerned, that Theatre Now should be answerable for, in the first place, back pay?

Mr. Arnold: My answer is that Theatre Now should not be answerable.

Judge Sherman: Even if it had knowledge that—

Mr. Arnold: Mr. Doucette was never an employee of Theatre Now, he was never related in any way to Theatre Now.

[13] I think it's academic, your Honor, that the Grease Company does have funds. It's not a company which is hiding behind a corporate existence. It's fully capable of paying any judgment or award that may be determined it's required to pay.

This is not hiding behind a facade of no pay, ultimately.

Judge Sherman: Perhaps you aren't, but the Doucettes might be.

Mr. Arnold: The Grease Company has showed that it's the sole proprietor of a successful show. I cannot make any statement as to Threatre Now's financial area.

Judge Sherman: Theatre Now has no power to reinstate these people?

Mr. Arnold: Absolutely not and—

* * *

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[14] JOSEPH F. DOUCETTE, SR. * * *

The Witness: Joseph F. Doucette, Sr., Post Office Box 48, Newton Junction, New Hampshire.

DIRECT EXAMINATION

Q. (By Mr. Pollack) What is your occupation? A. Stagehand.

Q. And how long have you been a stagehand? A. Twenty years.

Q. And did you ever work for the Grease Company? A. Yes.

Q. And in what capacity did you work for them? A. As carpenter.

Q. And you worked for the road show? A. The road show of Grease, a traveling show.

Q. And when did you work for the Grease Company? [15] A. I signed contracts about December 13 or the 14th and started work that day.

Mr. Arnold: Can we identify the year, please?

The Witness: 1972.

Q. And until what date did you work for them? A. Until I was terminated, June 17—around June 17, 1973.

Q. Mr. Doucette, I show you what has been marked as General Counsel's Exhibit 2 for identification, and ask you if that is the contract that you just referred to? A. Yes, it is.

Q. The contract bears the date of December 13, 1972. Did you sign it on or about that date? A. Yes.

Q. Where did you sign that contract? A. This was signed in the office of Mr. Eddie Davis at Theatre Now, New York City.

Q. Who hired you? A. Mr. Eddie Davis of Theatre Now.

Q. At the time you signed that contract? A. Yes.

Q. Did Mr. Davis also sign the contract? A. I signed it first, and Mr. Davis signed them afterwards and returned it to me on the same day.

(Whereupon the document referred to was marked General Counsel's Exhibit No. 2 for identification.)

[16] (Whereupon document was marked General Counsel's Exhibit No. 3 for identification.)

Q. Mr. Doucette, I show you what has been marked as General Counsel's Exhibit 3 for identification. Did you sign that General Counsel's Exhibit 3? A. Yes, I signed my son's name on this contract.

Q. When did you do that? A. That would be December the 13th—on or about December the 13th, the same time as I signed my contract.

Q. Was Mr. Davis present at that time? A. Yes, Mr. Davis was present and he signed it after I signed it.

Q. In your presence? A. Yes.

* * *

[21] Q. (By Mr. Pollack) Mr. Doucette, could you just briefly explain for the Judge what a flyman is? A. The flyman

was my assistant. He helped me set the show up, put the scenery together, the units. We worked together and once a show was set up and ready to operate, he worked on the fly floor. He had control of the men that they brought the scenery in, that they flied in from the air, the scenery change. He told the man when to bring the pieces in and take them out, change the sets. He worked on a pin rail on the fly floor, that's where everything is operated from, that's where all the lines are tied.

* * *

Q. Please explain briefly what you did as carpenter. A. My job is to set the show up. When we bring it in from the trucks, I bring it in and assemble it with my son and the local help. There we put the show together and once it's operating fine, I just had to be sure that it kept going and as I said, my son was on the fly floor and he made the changes with the local men, but I was [22] responsible for my end of it, being sure that the show got up.

Judge Sherman: You didn't actually change the sets?

The Witness: No. I didn't work on the fly floor. My son was flyman.

Mr. Arnold: I didn't hear you.

The Witness: I took care of the floor, the sets on the floor and my son took care of the fly floor.

Q. Just one more question about that. You used the phrase, local help, what did that mean? A. That would be the local union. Every town we went to, we had to call ahead and say how many men we needed. That started at the beginning of the show. We would come in, bring the show in, put it together. Once a show is put together and ready to open, all the extra help, the union help is dismissed and we just keep

the amount of men that we need to help operate the show while it's running.

Q. Mr. Doucette, do you know an Edward Vignale? A. Yes.

Q. What is his occupation? A. He is one of our IA representatives from the International Alliance of Theater and Stage Employees.

Q. Were you ever present at any meetings of the managers [23] of the Grease Company where Mr. Vignale was present? A. Yes.

Q. When was the first meeting? A. The first meeting was in Cincinnati on a Tuesday. Mr. Ed Vignale came in on a Tuesday, I think it was Tuesday, May the 29th. He came in—

Q. Where was the meeting? A. At the Schubert Theater in Cincinnati backstage in the office of the company manager, Don Antonelli.

Q. Who was present at this meeting? A. At the meeting, Don Antonelli, the company manager, Frank Marino, the production stage manager, Ed Vignale and myself.

Q. How did you happen to be at this meeting?

* * *

A. Mr. Frank Marino the production stage manager wanted [24] to terminate our soundman, Bob Weeden, and Ed Vignale was brought in to talk to management about this, if it was legal or not.

Q. Please listen to my question now. How did you happen to be at the meeting? Did anybody invite you to the meeting? A. I was invited to the meeting with Mr. Vignale. I brought him into the office, I introduced him to the company manager and to Frank Marino and I also sat in on the first meeting that the four of us had at that first meeting.

Q. Please tell us what was said at this meeting?

Judge Sherman: Who invited you to the meeting?
The Witness: Ed Vignale, our representative.

A. I didn't hear you.

Q. Please tell us what was said at the meeting and tell us who said what? A. Well, the reason for the meeting was to see if we could save the soundman's job—

Mr. Arnold: Objection on the same grounds.
Judge Sherman: Go on.

A. We were trying to save Mr. Bob Weeden's job. The talking was done by Ed Vignale and Mr. Frank Marino, they did most of the talking. Don Antonelli was sitting there and so was I. They talked back and forth and I did [25] ask one question, I asked for the reason why, if they would give us a reason—if Mr. Frank Marino would give us a reason why they wanted to terminate the sound job of Bob Weeden, and Frank Marino just didn't want to talk about it. He just wanted the man to leave. The meeting ended, Mr. Vignale tried to talk, tried to save the job so—

* * *

Judge Sherman: I know you didn't.
Mr. Pollack asked you what was said and by whom and would you please tell us to the best of your recollection who said what?
Mr. Pollack: I didn't want to interrupt the witness.
Judge Sherman: I was hoping that would come out.
Mr. Arnold: So was I.

A. Mr. Vignale was talking to Mr. Frank Marino to see if they could come to some arrangements.

Q. Please tell us what was said rather than telling us that he was talking. What did he say, to the best of your recollection? [26] A. He asked what the reason was, why did they

want to fire him. I can't remember too well the reason, but he did want a reason why Frank Marino did not want to keep the soundman and Frank Marino—that was it. So—

Q. What, if anything, did Mr. Marino say? A. Mr. Marino said I don't want him any more. I just want him to go, and that's it. Mr. Ed Vignale said I can't give you a decision tonight. I have to call the IA office in New York and get a ruling to see if you can do that.

And the meeting ended that we would come back tomorrow and Mr. Vignale would bring back the okay or not to let the man be terminated.

Q. Do you recall anything else that was said at the meeting? A. I did ask at the meeting to Mr. Frank Marino, "Would you please give us a reason why" and he just couldn't give us a reason, he wouldn't give us a reason.

Now, also, Frank Marino wanted Antonelli to pay the man off and that would be it.

As I said, Mr. Vignale said he had to talk to his office to get the okay on it. Don Antonelli said he must talk to his office, which is Theatre Now—

> Mr. Arnold: Objection—
>
> Judge Sherman: Excuse me. Did he say his office [27] was Theatre Now?
>
> The Witness: No.
>
> Mr. Eddie Davis, to find out if it would be okay to terminate and the meeting ended.

Q. Do you recall anything else that was said at this first meeting? A. They were complaining that the sound was not right.

Q. Who was? A. Mr. Frank Marino was saying that the people were complaining that the sound was not up to par in Detroit and that was one of the reasons that he wasn't capable of doing his job and they wanted to have him relieved.

Q. Do you recall anything else that was said at this meeting? A. It was said—Mr. Frank Marino wanted to have Antonelli pay Bob Weeden off as of now and get him out of the theater. Pay him off and let him go home. But, as I said, Mr. Vignale had to check with the New York office and Don Antonelli, the general manager, had to check with his office to get a ruling on that.

Q. Aside from what you have already told us, can you recall anything else that was said? A. I was asked why I was in there—

Q. Who ask you why? A. Mr. Marino asked why I had to be in there and I [28] said I was brought in with Mr. Vignale and the only reason that I was in there was to sit and to listen to what he was talking about. That would be the same way that Donald Antonelli is sitting there to see what you're talking about to see what happens.

Q. Was there another meeting? A. That meeting ended that night and on the following day, on Wednesday during a matinee, Mr. Ed Vignale came back to the theater. He met with Don Antonelli and with Frank Marino and also with me and we had the meeting over again.

Q. You had a meeting with all four people present? A. With all four people again.

Q. Where was this meeting held? A. Backstage in Donald Antonelli's office in the Schubert Theater in Cincinnati.

Q. What was said at this meeting? A. Mr. Ed Vignale said that the IA home office in New York said that they have the right to fire the soundman, Bob Weeden, but that he was to be terminated Saturday night at the end of that week. He was to be paid his full pay and his vacation pay. So it was agreed that he was to leave Saturday, that weekend, that would be the end of his termination, but he was to be paid. It was agreed that that was going to be the way it was going to [29] be and that ended the meeting.

Q. Now, who agreed to this? A. It was agreed by Mr. Vignale to pay the man off and they could do that and it was agreed that Don Antonelli would pay the man off and he would leave us Saturday night, that would be the end of his working with us.

Q. And was another meeting held about Mr. Weeden? A. Now, on a Friday, Mr. Weeden was told that he was to go to Denver—

Mr. Arnold: Objection, unless we identify who told him what.

Q. Mr. Doucette, you would make things easier if you would listen to my questions and answer the questions that I ask.

Now, I asked you if another meeting was held. A. Yes.

Q. Where was the meeting held? A. On Friday in the same place.

Q. The following Friday? A. Yes, that would be like June 2nd.

Q. In the same place? A. The same place.

Q. Who was present? A. At that meeting Don Antonelli was present, Frank Marino, Bob Weeden and Ed Vignale and myself was brought [30] in on that meeting.

Q. Please tell us what was said and who said it. A. At that meeting, Frank Marino decided that—

Mr. Arnold: Objection to the word decided.

A. Had said that they would take Bob Weeden into Denver for the week. Since they were paying him, they would make him work the week out.

Ed Vignale said "You made a ruling that the man would leave Saturday night, and now you change the ruling." But he said, "You have a right, you're paying the man and if you want to bring him into Denver, you may".

Q. Did you say anything at that meeting? A. I did not want to go to that meeting.

Q. I asked you whether you said anything? A. No.

Q. Who told you that your employment with the Grease Company was terminated? A. Don Antonelli.

Q. When was that? A. June the 17th in Los Angeles.

Q. Where in Los Angeles? A. In his office backstage at the Schubert Theater at the end of the show that night.

Q. Was anybody else present besides yourself and Mr. Antonelli? [31] A. At the time, no. Mr. Antonelli called me in his office. He closed the door and it was just him and I in the room at that time.

Q. Please tell the Judge what was said. A. Mr. Antonelli sat down at the desk. He said, "I got to let you and your son go." I said, "You got to be kidding".

He said "No. I got to do the dirty work. I got to pay you off and your son off."

I said, "What is the reason?"

He said, "I don't know. I don't have a reason. I was told to pay you off, to terminate you and your son."

I said, "Why are you terminating my son?"

And the only reason he gave me was, "Because he is your son".

The man gave us our pay checks. He said, "I'm sorry. There's nothing I can do with this. It's out of my hand, it's coming from Mr. Davis."

I said, "Do you mind, is it all right if I call Mr. Davis in the morning?" Because this was like 10:00 o'clock at night. I said, "Do you mind if I call Mr. Davis in the morning?"

He said, "I wish you would call Mr. Davis and he will tell you the reason." And I left the office.

Q. Did you later call Mr. Davis? [32] A. I called Mr. Davis the following morning around 9:00, 10:00 o'clock New York time.

Q. Where did you call him? A. I called him at his office in New York City here, the Theatre Now office.

Q. And how do you know it was Mr. Davis that you spoke to? A. I know Mr. Davis' voice.

Q. Please tell us what was said in this conversation. A. I asked Mr. Davis what had happened, why I was being laid off and why my son was being laid off. He told me that he was mad at me for bringing in the IA representative into Cincinnati, I had no right to do that. That I was interfering in something I shouldn't be bothered with.

We talked a little longer and I said, "Why is my son going. He had nothing to do with it. He never attended none of the meetings?"

He said, "Because he is your son."

Now, Mr. Davis said, "I was going to fire you three weeks prior, I was going to fire you in Cincinnati, but I needed you for the opening in LA, but now I don't need you."

That was the end of it. He just hung up on me. That was the only reason I got. I tried to talk to the [33] man, but he just didn't want to talk at that time.

Q. Did you ever have a conversation with Frank Marino, the production stage manager in which the subject of your discharge was mentioned? A. Monday was a day off. Tuesday we came into the theater, I came into the theater to get my equipment—

> Mr. Arnold: May I object unless we identify the date, as to what Tuesday he is talking about?
>
> The Witness: I think it's the 19th, on a Tuesday in Los Angeles.

Q. You are talking about June of 1973? A. 1973. I went backstage with my son with the business agent of Local 33—

Q. Do you know that gentleman's name? A. Mr. Barn-

hardt. He's the IA business agent of Local 33 in Los Angeles—

Mr. Arnold: Can you spell that, please?

The Witness: It's Barnhardt.

Mr. Arnold: What is his first name?

The Witness: Frank.

My son and I were in the theater getting our equipment ready. Frank Marino and Don Antonelli were there. There was some work to be done before the show that night.

Mr. Antonelli came over to me and said, "Why is [34] your son so mad at me—" that was Mr. Marino who came over to me.

Q. When he came over to you, were there other people present? A. Mr. Marino came over to me and wanted to know why my son was so bitter to him. There were other people nearby.

Q. Were these other people close enough to hear the conversation? A. Yes, they were putting a set together and they were close enough to hear. I said you must have had something to do with this.

Mr. Marino said, "I had nothing to do with it. I just heard about it Sunday afternoon." He said, "I was just as surprised as you were."

He said, "We finally got where we could work together", he said, "I just don't believe it."

So, I explained to my son as to what had happened, that Mr. Frank Marino had nothing to do with our being discharged.

Q. Did you explain it to your son while Mr. Marino was present? A. Yes, we were all working around, gathered in the center of the stage, five or six of us were around there.

Q. During your employment with Grease, were you ever [35] given a warning or a reprimand about your work? A. No.

Q. During your employment with Grease, were you ever given a compliment about your work by any representative or manager of the Grease Company? A. Yes, I was.

Q. When did you receive a compliment about your work? A. I received a compliment from Kenny and Maxine, Maxine Fox and Kenny Waissman, who are co-producers and owners of Grease Company.

Q. When was this?

* * *

Mr. Arnold: I have no objection to him refreshing his memory from any of his notes.

A. That would have been in Baltimore. The date would [36] have been January the 29th, opening night in Baltimore.

Q. Where did this take place? A. This took place backstage when the two producers, the owners came backstage, Mr. Waissman and Miss Fox came backstage, they said the show was beautiful.

Q. Was there anybody else present? A. There were a bunch of us standing around, a bunch of the crew, the cast. Everybody was happy with the show. It was right at the end of the show. Everybody was getting ready to go to the party out front.

Q. Please tell us what was said. A. Mrs. Fox said the show was beautiful. They were happy with it, it was their hometown and we gave them a good show for their hometown and they were very proud of it.

Q. Did you receive any other compliments about your work?

Judge Sherman: Excuse me, was Mrs. Fox talking to you as an individual?

The Witness: She was talking to me—there were other people there, she was happy with everybody about the opening of the show.

Judge Sherman: This was, in essence, a compliment to everybody on opening night?

The Witness: I hope so. She was very happy with [37] the way it went.

Q. Did you receive any other compliments about your work? A. Mr. Eddie Davis.

Q. When was this? A. That would be in Washington, D.C. On March the 5th in Washington, D.C., that was on Monday, March the 5th on opening night.

Q. Was anybody else present? A. He was up on stage, he was standing up—it was 7:30 at night, it was a little late for the curtain, it was the first time we made it in a one day move instead of a two day move. He was happy that we finally got it down to one day. We worked on top of the unit and he was standing up there with me, Don Antonelli and a couple of the local boys were still doing a little work before the curtain went up that night.

Q. What did he say? A. He said he was very happy. He said, "I knew you could do it in the time we wanted, in one day. It was a great saving for the company." He was very happy.

Q. Did you receive any other compliments about your work? A. In L.A. after the opening in the hallways backstage, Mrs. Fox—

[38] Q. Before you can tell us what was said, tell us where it took place, when it took place and who was present. A. This was backstage at the Schubert Theater in Los Angeles.

Q. When was that? A. That would be June—opening night, around June the 12th or 13th. I may be wrong by a day or so. It was opening night in L.A.

Q. Who was present? A. The hallway was full with actors and people who came backstage, well-wishers back there. Everybody was getting ready to go to a party and we ran into Mrs. Fox and Mr. Waissman and they loved the show, the show went over great.

Q. What did they say? A. They said that the show looked beautiful and they were very happy with the show and the way it was run.

Q. Did they say it to you, or did they say it to everybody? A. They said it to me. There were other people around. I hope it was meant for everybody, but they were standing there and talking to me.

Q. During your employment with Grease, did you ever receive a raise?

[39] Mr. Arnold: I'm going to object to that. I don't think that's relevant or irrelevant, your Honor.

Judge Sherman: I will allow it. I think it's relevant.

A. Yes.

Q. When did you receive a raise? A. Around March—the week of March 26th, that week.

Q. And how much— A. It was a $50 a week raise.

Q. Did you have any discussion with any representative of the company at the time you received the raise? A. I had phoned Mr. Davis—

Q. When? A. I had phoned Mr. Davis around March 27 or the 28th the week that I got my raise.

Q. Where did you call him? A. I called him at his office in New York, the Theatre Now office in New York.

Q. Please tell us what was said. A. I called Mr. Davis on the phone and I says, "Eddie, our agreement was that I would go out for six weeks and within six weeks I would get a $50 a week raise if I done the job in one day." I said, "Now that I do the job in one day, I think I will ask for a raise."

Now—

[40] Q. Please confine yourself as to what was said. A. So, he said "All right, you got your raise." And it did come in on my pay that week.

Q. Did anybody else receive a raise? A. At that time Mr. Antonelli said he should get a raise also. He's our general manager and whether he got his raise then, I don't know. But he was going to call Mr. Davis for a raise.

Q. Did your son receive a raise? A. My son got his raise in February—the week of February the 10th.

Q. And how much of a raise did he get? A. He got a $25 raise the week of February 10 and that was in Baltimore.

* * *

CROSS EXAMINATION

[41] Q. (By Mr. Arnold) Mr. Doucette, can you identify exactly the day you spoke to Eddie Davis? You say it was on the 27th of March? A. Referring to what?

Q. I am referring now to the testimony with respect to the date you got a raise. Would you identify particularly the week you got the raise and the day you spoke to Mr. Davis? A. It's the week in Cleveland—I won't say exactly what day it was. It was either on a Wednesday the 28th or—on a Wednesday the 28th or Thursday, the 29th of March in Cleveland.

Q. It couldn't have been the week before? A. The week before we were in Washington, D.C. We had talked about a raise in Washington, D.C.

Q. Well, you had said in your direct testimony that the week of March 26th when you were in Washington, you called Eddie Davis. Now, is it your testimony that you called Eddie Davis when you were in Cleveland? A. Yes, the week of March 26th we were in Cleveland.

Q. Not in Washington? A. No. The week we were in Cleveland, Ohio.

Q. What week did you start working for this company? A. I started working for the company in December, 1972.

Q. And didn't you testify that your agreement with [42] Eddie was that after six weeks you would get a raise? A. Yes.

Q. But you waited for more than six weeks to ask for the raise? A. Right, because I did not do the show in the one day like I had promised to do for the raise.

Q. You promised to do the show in one day? A. If possible.

Q. When did you make that promise? A. That promise was made—it wasn't a promise. I said I would do the best I could. He wanted a man to do the show in one day instead of two days' work. I said I would do the best I could.

Q. When did he say that? A. That was—I first talked to Mr. Davis around December the 10th or the 11th in his office in New York, in his office, and I went back and saw him on the 13th, the day we signed the contract. He had hired me—the first two meetings he didn't hire me, we talked. Then I came back on the 13th and that's when he hired me.

Q. And that's when he said he wanted the show done in one day? A. Yes. He wanted the show done in one day.

Q. Did he discuss the design of the show with you at those meetings? [43] A. Not at the first meeting, because I didn't know the show. I never saw it at the beginning.

Q. The second meeting, did he discuss the design? A. When he came in to Boston—not in his office, when he came in to Boston after the opening—

Q. I'm talking about before you were hired, before the show opened or at about the same time you were hired, did Mr. Davis discuss the design of the show with you? A. No.

Q. Well, did you go to see the show in New York? A. Yes.

Q. How many times? A. I saw it one night in New York.

Q. Do you recall Mr. Davis telling you the road show was

designed specifically for a one day take-in? A. He was hoping.

Q. Did he tell you that it was designed for a one day take-in? A. He was implying that he wanted it done in one day. I didn't know how it was designed, I never saw it, so I couldn't argue with the man.

Q. Well, you saw the show in New York, didn't you? A. Yes.

Q. And that was before this conversation when Mr. Davis told you he wanted the show hung in one day; right? [44] A. Yes.

Q. Did he show you any physical designs? A. I just saw the show in New York and the next day I went to the shop and I got a set of plans. I took the plans to study.

Q. You studied the plans? A. I studied the plans as to how to learn to put the show together.

Q. And then you met again with Mr. Davis? A. In—I talked to Mr. Davis—yes, I did.

Q. Did Mr. Davis tell you that he was an old bus and truck operator? A. Yes, he did.

Q. Did he tell you that this show was designed like a bus and truck for a one day hanging? A. He was hoping it was.

Q. Did you say you would hang it in one day? A. I said if possible, I would. I said I would need about three or four times to see what I could do.

Judge Sherman: When you said you went to the shop to pick up the plans, where was that?

The Witness: To Pete Feller's Scenery Shop in New York where the set was built. We put it on the trucks to take it to Boston for the opening. We loaded it on the trucks and took it to Boston for the opening. That was [45] the only time I saw this show when it was loaded in the trucks.

Q. Mr. Doucette, you just heard the Judge's off the record remarks about not being able to see some things. A. Yes.

Q. Did you ever receive a complaint by anybody in management with respect to how a particular show was hung in any city as to sight lines? A. I don't remember, but it could have happened, yes.

Q. Could it have happened in Baltimore? A. In Baltimore, no.

Q. It never happened in Baltimore? A. It did happen in Baltimore, but not on account of the set. It was the way the house was built itself. If you are sitting over in the corner, you couldn't see one side of the stage, you could see the other side.

Q. Do you recall Mr. Waissman approaching you in Baltimore with respect to sight lines as to how the curtains were hung? A. No, I don't recall it.

Q. Do you remember ever—after the set was hung and before opening night in Baltimore, do you remember changing how the side curtains were hung at Mr. Waissman's request? A. Yes, I did, two black legs.

Q. Tell us how these came to your attention and what [46] you did? A. I was told about it. He wanted them wider so they could see more of the photo drop, more of the pictures. He asked what I could do about it, and I said I could move the black legs way off.

Q. Did he tell you that the black legs made the stage look too narrow and they should be hung to show a wider stage? A. He asked if I could do anything about it.

Q. Did you? A. Yes.

Q. It should have been hung that way in the first place? A. It could have been, but we have a plan, there's a certain way of hanging the show. We can make it smaller or bigger. The reason I could move those off in Baltimore, is because the pipes were 70 feet long. It gave me a chance to pull them off.

Q. After they were hung, did you ever go into the orchestra to see if the sidelines were— A. Yes.

Q. Did you notice that these black legs were too close? A. To me, no, I'm not the designer.

Q. Isn't it your function to examine the set after it's hung? [47] A. I always do to be sure that I'm working and to make sure it looks the best I can get it.

Q. Well, in Baltimore, the black legs were able to be moved to make a wider stage, weren't they? A. Not to make a wider stage. To open up the back picture.

Q. Did you go into the orchestra along the sidelines to determine whether or not the seats at the sidelines had adequate sight lines to the stage and the set? A. Yes, but whatever you did in that house, you couldn't open it big enough so that everybody in every seat could see it properly.

Q. After Mr. Waissman's suggestion, did you open it up wider? A. Yes.

Q. Did you ever go up to the second or balcony levels in any theaters to see whether or not the set or the actors on stage would be visible to most of the seats? A. No. I can only hang my front porthole at a certain height. That is the first thing you see of a show.

Q. Isn't it true that the Grease set is on two levels? A. Yes, it is.

Mr. Pollack: Your Honor, I would like to object to this line of questioning. I think it's irrelevant unless the employer is contending that this is why the man [48] was discharged—

Mr. Arnold: Obviously, your Honor, that is exactly why we're going into all of this.

Judge Sherman: Very well. Go ahead.

By the way, are black legs curtains?

The Witness: Curtains.

Q. Are you familiar with the fact that Grease does have a two level set? A. Yes.

Q. Are you familiar with the number of times during the performance that there are actors on the second or upper level? A. I do.

Q. Are you aware of the relative position on the second level where these actors are required to perform? A. Yes.

Q. Is it your contention that the way the black legs were hung in Baltimore, the actor performing on the second level in hand jive could be seen?

Judge Sherman: In what?

Mr. Arnold: Hand jive, j-i-v-e.

Q. Are you familiar with the hand jive scene? A. No, I'm not.

Q. How often are you familiar with the scene? A. Quite often, but I'm not familiar with the terms, [49] whatever you people call them.

Q. Would you be more familiar if I told you it was the dance at the gym? A. Yes.

Q. Are you familiar with that scene? A. Yes.

Q. How many people are performing at the upper level? A. There's three up there at once and then the actors come up and down, walk on the steps and at one time there's only one man with his guitar playing.

Q. Where is he? A. On stage left.

Q. How far stage left would you say? A. About three, four feet from center stage to the left.

Q. Now, let's concentrate in your mind, if you can visualize where that actor is at stage left when he is doing the solo with the guitar. Is it your contention that when you originally hung the black legs, he was—the audience could see him from any seat in the house? A. No. In that house, you

cannot see from every seat in that house. He could not be seen. Even if it was a bare stage, he couldn't be seen from every seat in that house.

Q. Isn't it true that the way you hung the black legs, you obscured him from approximately one-third of the seats [50] in the house? A. No.

Q. How much do you think you opened it up to when you—

Mr. Pollack: Objection. He is arguing with the witness.

Judge Sherman: Go ahead.

A. The black legs are off of the picture off of the hard legs. They cannot be used because they are holding up the set. The black legs are at the end of the hard leg. There's nothing except a photo drop that would be cut out, part of the ends of the photo drop would be cut out.

Q. How much of the end of the photo drop? A. Depending upon where you were sitting.

Q. How many seats do you think opened up after you opened up the black legs? A. A few.

Q. Twenty seats, a hundred seats, two hundred seats? A. I would say fifty, a hundred seats.

Judge Sherman: What is a hard leg?

The Witness: It's a piece of scenery made of wood. It's hard and the other one is a soft leg or black legs. They are soft, velour, you just fold them up. The other ones are solid wood.

Judge Sherman: And the hard legs—

[51] The Witness: Are hung on the outside of the black legs. The hard legs are from the center stage going to the left and the soft legs, the black legs would

be hanging from the hard legs off stage so as to close it up.

Judge Sherman: I see.

Q. Let's go back now to the day you say Mr. Waissman and Miss Fox complimented you on the way the show looked in Baltimore; is that your testimony? A. Yes.

Q. Is that the same day Mr. Waissman asked you to move the black legs? A. No, it couldn't have been.

Q. Didn't we establish that it was on opening day that Mr. Waissman told you that he wanted the black legs moved? A. I will not—I cannot answer that. I don't know exactly what day it was, but it was at the beginning of the week, I do remember that.

Q. It was very, very early— A. At the beginning of the week, yes.

Q. Do you remember after the show opened in Baltimore ever changing the set, the hanging of the set after opening day? A. In Baltimore is where I decided that the set had to be changed so we could do this in one day. Now, all [52] the hanging, I got the okay from Mr. Davis to cut the set and change the set so we could do this and cut down the man-hours.

Q. Let's stop now.

After the show was set in Baltimore, forgetting about the okays you got to cut it later on, after the show was set in Baltimore, did you ever change it in Baltimore? A. Yes, we done the whole set over in Baltimore.

Q. What did you do to it? A. We cut two feet off the back end of the set. That means that we brought down the Sandra Dee set, we changed that.

Q. Did you change the hanging of the black legs? A. They were changed.

Q. When? A. They were changed before we did the cut-

ting on this. I was told by Mr. Waissman if I could move it—I can't tell you what day it was—

Q. I'm trying to determine, I'm trying to fix in your mind whether or not he told you to do that on opening day and I'm trying to find out—isn't it a fact that you made no other changes until you started cutting? A. Yes.

Q. Mr. Waissman was not around when you made the other changes, was he? [53] A. No.

Q. When was Mr. Waissman around in Baltimore? A. He was there quite often.

Q. Do you remember the first time you saw him in Baltimore? A. He was in Baltimore for the opening. He was backstage.

Q. And you don't recall the day that he asked you to widen, to move the black legs, was opening day? A. Maybe it was, I don't remember the day.

Q. Let's talk about that night when you say you got a compliment.

Where were you when you say you got this compliment? A. Backstage at the Morris McKenneck Theater, by the switchboards, by the entryway when you go in and come out of the building.

Q. This was after the show? A. Yes.

Q. Was the cast there? A. Some of them were. It was right after the show. Some of the cast were going and changing their clothes.

Q. What were you doing at that time when Mr. Waissman walked in? A. I was getting ready to go home.

Q. You were finished with your work? [54] A. Yes, we were finished with our work. The show had ended and we were getting ready to—

Q. "We", meaning who? A. The people backstage, the house crew and the road crew were getting ready to depart.

Q. You were right by the door leading offstage? A. No.

Q. By the steps leading offstage? A. No, the stage is here, the entryway is here and you had to walk over here.

Q. Anybody leaving the stage had to walk that way? A. Yes.

Q. How many people were near you when Mr. Waissman was there? A. It could have been ten of us.

Q. Who, who do you remember being there, any members of the cast? A. Some of them could have been walking around there. I don't say they stopped and talked with us, no, but everybody was congratulating everybody.

Q. It was a great feeling, this was opening night in Baltimore and it was a good show? A. That's right.

Q. And Mr. Waissman didn't compliment you; he complimented everybody, didn't he? [55] A. I hope he did.

Q. Did he speak out loud to a lot of people? A. He talked to everybody. He met people out in the hallway, he talked to the actors.

Q. You have seen Mr. Waissman address the whole company, haven't you? A. I don't know—

Q. Have you ever seen Mr. Waissman address the whole company? A. I have seen him backstage talking to people and shaking people's hands.

Q. I'm talking about the California compliment, how many people were there? A. That was a busy hallway. This was backstage in the hallway. As you stepped out of the stage, everybody was getting ready for the party. Everybody was talking about everybody and everybody was congratulating everybody.

Q. Did Miss Fox come over to you and congratulate you, Joseph Doucette, Sr.? A. I don't think she came over to me. I happened to be right walking there or right by everybody else, with everybody else going in between. Everybody was getting ready to go to a party and everybody was talking with

everybody and all I can remember is that she said it was a [56] beautiful show and—

Q. Who did she say it to? A. I was standing there and—

Q. Did she look at you and say it was a beautiful show? A. Yes, she generally talks to me.

Q. Not generally, but on that occasion, did she look at you and say it was a beautiful show? A. I don't say that that was the exact words, but they thought the show was wonderful.

Q. What did Miss Fox say? A. The exact words I don't know, but she was very happy the way the show went off and everybody seemed to be very happy.

Judge Sherman: Did she use your name in these remarks?

The Witness: I was talking with her.

Judge Sherman: Did she say it was a beautiful show, Joe?

The Witness: No. Mrs. Fox talks to everybody.

Q. Was this a one on one conversation, you and Mrs. Fox? A. No, I don't say I was the only one standing there.

Q. Who else was standing there? A. I don't remember. There were so many people walking [57] in and out at that time.

Q. You say she was complimenting you on your work?

Mr. Pollack: Objection, your Honor.

Judge Sherman: Answer the question.

A. I was hoping that she was.

Q. Now, Mr. Doucette, will you describe—you were hired as a carpenter in the show? A. Yes.

Q. Will you describe slowly and carefully the duties of a carpenter on a road show as opposed to the duties of a car-

penter at a show running in New York; is there a difference? A. A lot of difference.

Q. Tell us the duties of a carpenter on a road show?

Mr. Pollack: Is this relevant, your Honor?

Mr. Arnold: It's absolutely relevant.

Judge Sherman: I think it's relevant.

Go ahead.

A. It's my duty—

Q. Not your duty, a carpenter's duties. If you come to a point where your duties are different from another union carpenter—

Judge Sherman: Perhaps you ought to ask him what his duties were on this particular show.

Mr. Arnold: Well, your Honor, there are some dis- [58] tinctions which will have to be gone into. I was trying to simplify it.

Judge Sherman: I was wond ng what the materiality was of what the carpenter's duties were generally.

Mr. Arnold: I will connect it.

Judge Sherman: Mr. Doucette, by the way, please don't put your hand in front of your face when you talk.

Q. Now, we're talking about the duties of a carpenter on a road show, a national company. A. I'm going to use me—

Q. Because you are saying your duties were the same in this show as any other carpenter in any other show.

Go ahead. A. It's my duty to see that the set—I'm just talking about the carpenter's department—it's my job to see that the sets are put together. They are unloaded from the truck and brought onstage. The electricians unload at the time—the carpenter will unload his truck first or second, it doesn't matter.

The three trucks are unloaded and brought onstage.

Q. Do you physically unload or are you a boss? A. I'm a boss.

Q. Over who? A. Over the local help that I am using in whatever town we happen to be in.

[59] Q. You don't then lift— A. Oh, no. I direct. I tell the boys how to take it off the truck.

Q. And that's the job of a carpenter anywhere, to direct rather than lift? A. No, no. I also must work with them to set the set up.

Q. Well, now you are saying that when it comes to unloading a truck, you direct how it's unloaded, you don't lift? A. No, I work with the boys.

Q. Well, I asked you— A. I must direct the boys that are working with me—

Q. Do you lift, do you carry, do you move? A. Yes.

Q. But you are in charge, you say? A. Yes.

Q. And you are in charge of local carpenters? A. Local carpenters, local crew, local stagehand crew.

Q. When they are engaged, are they engaged as you are, as a carpenter or as a general crew? A. They are engaged—they are employed as stagehands.

Q. As stagehands? A. As stagehands.

Q. So you direct the unloading? [60] A. Yes.

Q. And you also unload yourself? A. I help.

Q. Continue. A. After we get into the theater, it's my duty to lay the show out.

Q. What does that mean? A. I must decide how I'm going to put the show into that theater. Every theater is different. It's up to me to decide where I can put the show to make it work. Some theaters may be small, I have to make the show tight.

Q. When do you decide that? A. Since I have been around awhile, I know what theaters I'm going to, I know what has to

be done. I have an idea of what I may have to do to it in this theater.

Q. As you are unloading and putting things in place, you decide where things have to go? A. No, I generally have an idea of what I have to do. Now, once I get in the theater—on this show here, I would go ahead a day before—

Q. Is this different from any other show? A. No.

Mr. Pollack: If counsel asks a question, he ought to give the witness a chance to answer it.

Judge Sherman: I don't think it has been that bad. [61] Mr. Doucette, if you think you haven't answered a question at the time Mr. Arnold asks another one, you have a right to finish.

Q. I don't mean to interrupt you, Mr. Doucette. Please volunteer any information you want, if you think I haven't allowed you to answer.

You said on this show "I went ahead". Now, are you saying that on most road shows the carpenter doesn't go ahead, but he knows the theater by reason of his prior knowledge and experience, but on this show, it was different? A. No, I didn't say that.

Q. I asked you before when do you determine which goes where and you said "I usually know that because of my experience, I know all of these theaters." Didn't you say that? A. Yes, I did.

Q. Now, saying on this show you went ahead? A. Well, I wanted to come back and say that I went ahead also on this show and did the work. This was laid out in my mind and in my—on paper.

Q. What do you mean you went ahead? A. I would leave Wednesday or Thursday night and go to the next town.

Q. You would go in advance of the move? [62] A. Yes, I would do the rigging that had to be done.

Q. Rigging? A. That's the way I laid a set out.

Q. Is that physical work, or mental work? A. I have it laid out—the physical part I do—I think of before I get there.

Q. You're missing my whole point. You go into a theater, you're there three days before your truck will come. You look up and you see things and you say you do rigging. Now, do you do rigging in your mind, or do you hang things? A. No, we do the physical work.

Q. We? Do you have any additional help? A. The local crew that I am going to bring in, on this show I brought in six or seven men to do this work. That would be an advance call. They would come and I would say, "I must use that pipe to hang a drop", now, there's something hanging there, we must get that down and put it someplace else. I would lay the show out then and there according to the plan I have.

Q. How much time would that take? A. That would be an eight hour call.

Q. What do you call this, an advance call? A. Yes.

Q. Did you have an advance call on every city you went [63] to on this tour? A. There was an advance—

Q. Did you have an advance call of local stagehands? A. Yes, except Boston. Boston was the opening, we don't count Boston.

Q. But in every other city there was an advance call? A. Yes.

Q. Were you present at every one of these advance calls? A. Yes.

Q. How long was the advance call in each city? A. Maybe a day, a day's work.

Q. Were there ever any before a day? A. The move into Columbus which was a picturehouse, it was a very small house and everybody was worried how we could play that show in that house, I think it was two days. The first day they

had to clear the house out, everything they had hanging in the air and all our equipment had to get in there.

Q. How about in Detroit? A. In Detroit there was an advance call in Detroit, yes.

Q. How many hour advance call? A. I think that was a six hour advance call.

Q. Were you there during the entire six hours? [64] A. Yes.

Q. How long were you in Detroit before the show came? A. I went in on a Thursday—I'll take that back, I went in on a Friday, a Friday night to do the advance. It was set up with the house carpenter that I could do it Saturday morning before the rehearsal. I got there to do the advance, but that Saturday morning Lorelei was playing there, it was ahead of us.

Q. Didn't you know that that would be there? A. Yes.

Q. Why did you go there early then? A. I can work over another show.

Q. You can do rigging over another show? A. Yes, it was a straight hanging show and you can rig over it.

Q. What happened? A. I got there Friday night and Friday night they decided that they needed a rehearsal for Lorelei. Now, if they are in production, they don't have a schedule, whatever they decide they want to do, they can do. That killed my advance, I couldn't do my work. They were using the theater for rehearsal and when they use a theater for rehearsal, we couldn't do our work.

Q. Did you have a call in for local stagehands, advance [65] calls? A. Yes.

Q. Did you have to cancel it? A. Yes.

Q. What did you do that Saturday? A. I came back into Toronto.

Q. When did you leave Toronto?

Judge Sherman: Do you mean the witness personally?

Mr. Arnold: Yes, the witness personally.

A. The second week—

Q. When did you leave Toronto to go to Detroit yourself personally, for the advance? A. The first time I went down on the second week of Toronto.

Q. How long did you stay there? A. I went in there Friday and I stayed through Saturday and came back Sunday.

Q. When did you leave on Friday? A. Around 8:00 o'clock at night.

Q. You came back Sunday? A. I came back Sunday.

Q. Were you paid for that Friday, Saturday and Sunday by Grease & Company? A. Yes.

Q. When did you go to Detroit next? [66] A. The next time I went to Detroit was at the end of that week.

Q. The show was still running in Toronto, wasn't it? A. The end of that last week.

Q. What day did you go to Detroit? A. On a Thursday.

Q. Was the show still running in Toronto? A. Yes.

Q. How may days did you spend in Detroit? A. Thursday, Friday and back Saturday. Thursday night, back Friday.

Q. What date was that? What date did you leave, what date did you return? A. I think it's May the 24th, if that's a Thursday.

Q. You came back— A. I wouldn't say for sure and I came back on a—

* * *

Q. You played Toronto from April 2nd to April 21st?

Judge Sherman: Here's a calendar, if that will [67] help you.

Q. So it could not have been May 24.

* * *

A. I got to go back now. I must have went to Detroit on a Tuesday—

Q. What date? A. The last week around April the 19th.

Q. Would it help if I told you the show closed in Toronto on April 21? A. Right.

Q. What date was the 21st or what day was the 21st, I should say? A. I can't see this one.

May I have the large one?

Q. Surely. Now, when did you go to Detroit, we're talking about your second trip to Detroit. A. I would say that was on Monday. I was back in Toronto on Thursday.

Q. You were gone Monday, Tuesday, Wednesday and you came back Thursday? A. I was back Thursday. Yes, I was back Thursday.

Q. You left on Monday, what date, April— A. 17th.

Q. April 16th was Monday. A. No, I can be wrong on these dates.

[68] Q. Now, you recall you left on a Monday? A. Yes, I did leave on a Monday.

Q. That would be April 16? A. Yes.

Q. And you went back in time for the Thursday evening performance? A. Yes, I would say that I was back on Wednesday, the 18th, I was in on Thursday, I was in the theater Thursday afternoon. So I came back Wednesday.

Q. What did you do in Detroit for three days? A. That's the time we went to Detroit to do the advance work, the first time—

Q. You were in Detroit the week before? A. The week before we planned to do the advance work, but as I said, Lorelei held a rehearsal that morning so we couldn't do the work.

Q. Did you go there with somebody else? A. No. The house crew that I was going to bring in—

Q. Could not work the week before, we understand that. A. So I came back.

Q. Did you do any mental work the week before as to how you were going to do the show? A. Yes, I had that worked out in my mind as to what I was going to do.

Q What did you do in Detroit on the second trip? [69] A. We went back there to do the work. I had it written down as to what I was going to do. I had it written down.

Q. Did you have an advance call of local stagehands in Detroit the second trip? A. Yes, there were four men there.

Q. How many hours? A. Six hours.

Q. What day? A. Around the 24th—it must have been the night of the 24th.

Q. I'm confused. You just said you were there the week of the 16th of April. A. Yes. This could have been on a Tuesday night after the show.

Q. Lorelei was still performing? A. Yes

Q. You couldn't do your work until Lorelei completed the performance? A. That's right.

Q. So you have an advance call on Tuesday night? A. Right.

Q. What did you do all day Tuesday? A. I was at the theater.

Q. Doing what? [70] A. Just looking around getting a picture—

Q. Did you have to get anybody's permission to make these advanced trips? A. Yes, when I would leave the town I was working, I would talk to the house carpenter or business agent people there and tell them I was going to the next stand for a few days and I left.

Q. Got the okay from whom? A. From the boys I was working with, from the local of the city I was working in.

Q. What kind of an okay did you need from the local of the city? A. I had to tell them I was leaving.

Now, I must tell the local—whatever town I'm in, I must tell the local I'm going for a couple of days. If they say all right, I would go.

Q. Why would they say it was not all right? A. If there was an argument about it, when I left they would put a man in my place to replace me and that means the company would have to pay for another man. As long as it was agreed with the local crew that I could leave, it didn't cost the company nothing extra for a man to be placed there.

Q. Did you have any duties on a day to day basis after it was established in a city? After the show was hung in [71] a city? After the show was hung in a city, all the preliminary work is done, the show is performing, did you have an obligation—what are your work requirements every day? A. I come in at night to check the set.

Q. How do you check a set? A. We look around at anything that busted the night before and we would fix it before the next day.

Q. You're a stagehand; aren't you? A. Yes.

Q. Do you have to move sets and props? A. Yes.

Q. Does this show require any moving of sets and props? A. Yes.

Q. Did you have any regularly assigned duties as a stagehand for each performance of the show after it was hung? A. No. I would help whatever I could help. I really didn't have nothing special that I had to be on like a cue.

Q. You had no duties as a stagehand— A. I did, but no special cue to do it.

A. All the stagehands duties were done by local people or by people who traveled with you? [72] A. Yes.

Q. Then why would you need permission from the local union to leave if you had no duties during the performance? A. Well, when there's a show out, they want everybody to be there.

Q. Well, if you weren't there and you had no performance duties, you said they would have to put on another man to replace you. A. Yes, they would put on another man to pick up my contract.

Q. To do what? A. To do whatever I was doing.

Q. To look around? A. To do whatever I was doing.

Q. Is this the normal function of a carpenter on a show, just to hang the show and look around? A. To maintain it.

Q. He doesn't have to work as a stagehand? A. I have to see that my crew is there.

Q. Is it your testimony that a carpenter hired on a road show is not required to do ordinary stagehand duties as another stagehand during the performance? A. No, I'm not saying that. If there's work for him, he must work.

Q. Wait a second, we know what a show consists of. [73] We know that the work is the same every night. Is it your testimony that the carpenter doesn't have duties every night other than to look around?

Mr. Pollack: I object.

Mr. Arnold: This is the heart of the dispute here. I'll connect each and every question that I'm asking with the facts.

Judge Sherman: What was the question you were asking?

Q. Is it your testimony that a carpenter on a road show duties consist of taking the show in, once it's hung, looking around but it doesn't necessarily require you to be a stagehand every performance? A. No, I'm not saying that. You must be a stagehand every performance.

Q. Do you know what a yellow card is? A. Yes, I do.

Q. Tell me what a yellow card is? A. That's what you send ahead—

Q. Who is "you"? A. I would.

Q. Why you? A. The carpenter is the one that makes it out, signs it with the other departments. Now, on that yellow card, I would send that ahead to the next town and on that they [74] would find out how many men I would need to work in a show.

Q. Wait a second. You're the man who knows what this show needs; aren't you? A. Yes.

Q. How many men did this show need to work the show? A. Thirty.

Q. Thirty? A. To work the show, no.

Q. To do the show on a performance, how many men did this show need? A. It took two men on the fly floor, the house carpenter, the local house carpenter, it took the house electrician and a local front light operator.

Q. How many stagehands? A. They are all stagehands there.

Q. But how many stagehand stagehands? We're talking about a flyman, a local electrician—I'm asking you about stagehands, guys who move the stuff around. A. They all have something to do.

Q. How many more men? I have five here so far. A. And I have three in props, local men.

Q. That's all? A. That's it.

Q. How many men travel with the show including yourself? [75-76] A. There's two in the carpenter department, there's two—

Q. I asked you how many men you needed to work the show— A. You just asked me how many men are traveling with the show and there's two of us in the carpenter department, there's three—

Q. Two including you? A. Two including me, yes. There's three electricians and a sound man.

Q. One sound man? A. Right and two prop men.

Q. That's eight men traveling with the show including yourself? A. Yes.

Q. And now you're telling me—how about a flyman? Does a flyman travel with the show? A. Yes.

Q. So that's nine men? A. No, that's the other carpenter.

Q. The two carpenters with you and the flyman? A. Yes.

Q. And you got into a town and you had to hire local people? A. Yes, two flymen, house electricians, someplaces [77] a house sound man, three prop men and—

Q. So now, before you went to a particular city, you knew what was needed on this show? A. Yes.

Q. What were the variables, if any, as to the number of men that—IATSE men—

Mr. Pollack: Are you talking about setting up the show?

Mr. Arnold: After the show is hung.

A. That would be depending on—I would call for the eight men. When I got there, if the carpenter or electrician wouldn't do any work, if he was the head of a department, whatever the local in that town told me I had to put on, we would put on.

Q. Whatever the local told you? A. Yes, the IA local.

Q. And that would be determined by the usual practice of the theater? A. Yes.

Q. The particular theater's contract with the union? A. Yes.

Q. Now, let's talk about this yellow card which we have been talking about.

This yellow card was a card which has listed on it the names of IATSE members working for the show. [78] A. It has three names on it, yes.

Q. What three names? A. It would be the carpenter, the electrician, the prop man and the wardrobe man, four.

Q. There were three other names on the yellow cards besides your name, you being the carpenter? A. Yes.

Q. When were the names put on the card? A. The yellow card is mailed out a week before I go to the next city.

Q. Who mails the card? A. I do.

Q. With the three names on it? A. The rest of the forms are filled in. It says that there are so many men traveling on one side, so many men I'll use to carry the show and put it up in one column. The other column says how many men I'll use to work the show and the other column says how many men I'll use to take the show off.

Q. It was your responsibility as carpenter to fill out the card and send it ahead? A. Yes.

Q. And you did this in each and every city before going to the next city? A. Yes.

[79] Q. Did you put your name on that card? A. Yes.

Q. On [illegible]ry move? A. Maybe no. It was neither my son or I signed the card, whoever wanted to mail it out, mailed it out.

Q. I'm not saying who signed the card, I'm saying was your name on there as one of the designated workers for the next city? A. No, not always.

Q. Not always? A. Not always.

Q. Why didn't you have your name on it always? A. The first card that I sent out that I thought would be fair for the show was turned down in the IA office.

Q. How do you know that? A. I was told.

Q. By who? A. By Mr. Walter Diehl.

Q. When? A. In Philadelphia when we got to Philadelphia, that the yellow card would have to be changed.

Q. To do what? A. To add another man on it and put my name on it also.

Q. Your name wasn't on the first yellow card? A. After Boston, no.

[80] Q. Walter Diehl told you after Boston to put your name on the yellow card? A. After Boston, yes.

Q. Approximately when? A. Around the first week or the second week. He said—Mr. Diehl did not talk to me. Mike Sweeney the IA representative of Philadelphia came to the theater. He checked the cards of who was working and he was talking with Mr. Diehl. We had one man who was working on a permit. He was there to see if everybody had a union card or not. As he was talking to Mr. Diehl on the phone, I—he came to me and he said Mr. Diehl wants you to change the yellow card and be included on the yellow card.

Q. Could this have been in May? Look at your calendar. Could this have been in May, perhaps? A. This was done in Philadelphia. It was supposed to have been done in Philadelphia.

Q. Was it done? A. No.

Judge Sherman: Mr. Arnold, are you going to pursue this matter further?

Mr. Arnold: Yes.

Judge Sherman: What is the relevance?

Mr. Arnold: This man deliberately omitted his name from the work card so if somebody else would get additional [81] work—Mr. Diehl will testify on May 31, 1972 that he instructed this man that it was illegal and unconscionable for him not to put his name on the card. I promise this court I will connect up every matter I touch on.

Judge Sherman: All right.

Q. When did you first put your name on the yellow card? A. It was in Detroit—no, Cincinnati on May 28.

Q. Did you have a conversation with Walter Diehl on the telephone? A. Yes, I did.

Q. What did he say to you and what did you say to him? A. He said your name was supposed to have gone on that card in Philadelphia. He said Mr. Sweeney told you to put your name on the card. I said when I brought the card up to them to sign, the local must sign the card before I can mail it to the next town, they didn't change the yellow card on me, they left it like it was and I mailed it that way. And I—on that form I said Mr. Sweeney told me to put it on, I said I would when we made the yellow card out in Philadelphia, which their representative must sign to make sure the card is right. They did not do that.

Q. They did not do it?

Who is they? A. The steward of the house did not change the card.

[82] Q. Didn't you have to send the card every time you moved to a different city, since you have to send the card and sign the name? A. Yes, but my name didn't mean nothing. In every town that I worked, the business agent or his representative must sign the card on the bottom.

Q. Mr. Doucette, what is the effect of your not having your name on the yellow card? A. It was saving the company money.

Q. It was what, saving the company money? A. Yes.

Q. If your name were on a card before you got into a particular city, isn't it not true that the company would then hire one less employee? A. No, sir.

Q. Tell us what would happen. Tell us the difference between having your name on the card and not having your name on the card. A. I didn't just get your question.

Q. You're telling me that the effect of keeping your name off the card was to save the company money. A. Yes.

Mr. Arnold: Your Honor, may I ask that we have a recess for lunch at this point? It's 1:20.

Judge Sherman: It seems like a rather odd place to [83] stop.

Do you have any objection to having a luncheon recess?

Mr. Pollack: Certainly. I think we can finish this witness—

Mr. Arnold: I don't think we can finish this witness in another three hours.

Mr. Pollack: It seems to me to be an unusual time.

Q. (By Mr. Arnold) Mr. Doucette, when you spoke to Mr. Diehl on the telephone, did he order you to put your name on the card? A. Yes.

Q. Did he tell you why? A. That what I was doing was illegal and I should not better. The reason he told me that was, when I went ahead to set the show up, when I left that town, they would put a man in my place to replace me when I went to the next town. The company would have to pay for an extra man in my place.

Q. What about the theater, would the theater have to pay for an extra man? A. No, that man would replace me when I would go.

Q. When you would go where? A. To do the advance work.

Q. Replace you doing what? [84] A. Whatever I had to do.

Q. Your salary would be paid when you did the advance work and somebody else would be hired to take your place? A. No. He is replacing me. I'm still doing the work. My work is to set the show up and get it rigged for the next move.

Q. I don't understand this, Mr. Doucette, and I will have to belabor the point.

Mr. Diehl told you that it was illegal for you not to have your name on the yellow card? A. Yes.

Q. And he told you that on May 28? Could it have been May 21st? A. Anyway, whenever he did tell me this, it's got to be in Cincinnati when he was talking to Mr. Vignale on the phone—

Q. Where was this? A. In Cincinnati.

Q. Where was Mr. Vignale? A. In the Schubert Theater backstage.

Q. And you happened to be down there? A. Yes.

Q. Why were you there? A. This was when he was calling the IA office to get some kind of ruling. He was talking—

[85] Q. On the Weeden situation? A. Yes, and I happened to come right down there—

Q. Didn't you walk with him to the telephone right after the meeting? A. Yes, I could have.

Q. You didn't happen to come there, you walked with him. A. Yes, all right.

Q. Was it a public telephone? A. There was a public telephone down by the rest room.

Q. And Mr. Vignale had a conversation with Walter Diehl in New York? A. Yes.

Q. And you heard Mr. Vignale's side of the conversation? A. Yes.

Q. Was this conversation about you or about Mr. Weeden? A. About Mr. Weeden.

Q. It had nothing to do with you? A. I came into it later.

Q. You mean your name came into it later? A. Yes.

Q. How was your name interjected into it? A. I don't know, because I wasn't paying that much attention to what was going on. There were three or four of us talking while he was talking on the telephone. He [86] might have mentioned that I was standing right there with him, I don't know what he said, but he said Mr. Diehl would like to talk to you on the phone.

Q. You got on the phone? A. Yes.

Q. What did he say to you? A. He gave me heck for not putting my name on the yellow—

Q. Tell me what he said and what you said. A. He said, "I want your name on the yellow card like it's supposed to be."

Q. What did you say? A. I said, "All right, I'll do it." He said, "I told you to do that in Philadelphia." He said they did not—I said they didn't change the yellow card there, they signed it and mailed it out.

Q. Did he sound agitated when he talked to you? A. Anytime he talks to me, we both sound agitated

Q. Always? A. Always, for 19 years. I wouldn't say that that was abnormal or out of character.

Q. And he ordered you to put your name on that card? A. Yes, and I said I would have Mr. Vignale sign it and send it in to the IV office.

Q. Let's understand the yellow card. [87] The purpose of the yellow card, and correct me if I'm wrong, the purpose of the yellow card is to advise the IA office in a city that you're about to go to that the show is coming in and that you're going to need help, is that really the purpose of it? A. Yes.

Q. And also so is this could be advised as to what IA members would be working that city? A. Just a number, they don't know the names.

Q. You said the four names are on there? A. Yes, but there's other men working too. They really don't—they know who the carpenter would be, or who the three heads would be, but they don't know the names of the assistants, just a number.

Q. Now, what number did you put on these yellow cards before Cincinnati? A. The first one that I put on was one man in the carpenter department, four men in the electric department and two men in props.

Q. This is what your requesting. In other words, you were requesting one man in the carpentry department— A. No, this is what I was telling the next town, the roadmen coming into the next town.

Q. Now, what about the request for people? A. That would be on the other column.

[88] Q. Now, you were telling the number of men coming in with you. A. Yes.

Q. Your name wasn't on there and you weren't included in the number so they didn't know you were coming, did they? A. They thought one less man was coming because your name wasn't on there? A. No, no.

Q. Wait a second now. Didn't you say your name would appear with the heads of the department and the additional men coming with you? A. Yes.

Q. How many men in the carpentry department did you put on that? A. One, and one advance man.

Q. There was a place for an advance man? A. I put the place, my office was complaining—

Q. Whose office? A. The IA office was complaining.

Q. Now—

Judge Sherman: Just a minute. What they were complaining about was that you listed your name on the yellow card as an advance man and you hadn't appeared as a carpenter among the named persons?

The Witness: Right.

[89] Judge Sherman: But when you started adding your name to that list as a named person, you deleted the statement about the advanced carpentry coming?

The Witness: Yes.

Judge Sherman: Thank you.

Q. Isn't it a fact that because of the local town rules when they added up the people, the fact that your name didn't ap-

pear, it required an extra IA man to be hired in that city? A. No, no.

Q. Is it your testimony that the failure to list your name on the card saved the company money? A. Yes.

Judge Sherman: Would you care to explain your answer?

The Witness: Well, if my name—if I would have been in that block, if I would have been number 2 on that card—

Judge Sherman: You mean listed by name?

The Witness: Yes, with a number 2 instead of a number 1, when I got to Boston and I had to go ahead and do the advance work for the next move, when I left there, they would replace me with a man in Boston at my salary until I came back—

Judge Sherman: The IA would?

[90] The Witness: Yes, until I came back and when I came back he would automatically go off. I didn't do that. I know what I did was illegal there. I tried to save the company money by putting my name down as advance. So when I left it didn't cost the company anything extra to replace me. I would go and come back.

Judge Sherman: Do I understand you to say that if an individual is listed by name on that card, the IA requires that if for some reason or other he is not actually in the theater, somebody has to be hired to replace him?

The Witness: Yes.

Judge Sherman: If he's not listed by name, but simply as somebody who is traveling with the show and for some reason or other he's not at the theater, he does not have to be replaced as far as the IA is concerned is that right?

The Witness: If he's traveling under an advance—if he's called the advance man, he comes and sets it up. He does not have to be replaced.

Mr. Pollack: Your Honor, I think, judging from what you said, you're a little bit confused. I think the witness testified that it didn't matter—the names would be the department heads and there would be numbers and the difference would be in the numbers and it really [91] didn't change on whether the name was there or not, but what Mr. Doucette was testifying to was that his name was listed as an advance man rather than as a carpenter.

Mr. Arnold: That's the contention of the respondent that when he did it that way, the company was required to hire another carpenter because it required a carpenter and a flyman and we were required to hire another man. That's the point we're trying to bring out. We'll bring that out with Mr. Diehl's testimony and Mr. Davis' testimony. That's exactly the point.

Judge Sherman: Well, if you had to replace Mr. Doucette, whether he was listed as an advance man or whether he was listed as the chief carpenter, what difference did it make?

Mr. Arnold: The difference was that the local union required a minimum number for the show—everybody is telling me no.

It was an extra salary because another carpenter had to be hired in the town that they were arriving at and paid a full salary. Had he been listed as the carpenter on the yellow card when it was sent into the town, the show would have—they would have to hire one less carpenter.

Q. (By Mr. Arnold) After the show was hung, what is the job of a carpenter? [92] A. In this show it wasn't too much.

Q. What is the regular job of a carpenter after the show is hung? A. He works the show.

* * *

A. He works the show with the regular house crews and—

* * *

[93] Q. What were your duties with this show? A. Set the show up, move the show and operate it in the theater.

* * *

[94] Judge Sherman: Also, Mr. Doucette, I meant to ask you this during your direct examination—early in your examination and it didn't seem an appropriate time to slip it in, but exactly what is a photo drop?

The Witness: A photo drop that we're talking about, it has pictures broken up that's printed on a piece of canvas or a piece of scrim. What you're looking at is pictures all over this photo drop which we use as a back drop. It was pictures of Elvis Presley and a lot of other things that they had in the '50s. It was always there at the time the show was running.

Mr. Arnold: It was a big blow up of a photo.

Judge Sherman: I thought it might be something in the nature of a screen or something for slides.

Q. (By Mr. Arnold) Mr. Doucette, it is usually customary for the man who is hired as carpenter to engage an assistant of his own choosing? A. Yes.

Q. Did you so engage an assistant of your own choosing? [95] A. Yes.

Q. Is it customary if the carpenter is replaced, the assistant is also replaced? A. No. The assistant would generally move up into his—

Q. Supposing a producer hired a carpenter and you just said the carpenter usually hires his own assistant. Now, if a producer were replacing a carpenter who had left, wouldn't the carpenter have the right to choose his own assistant? A. No, because the assistant would know the show where the new carpenter wouldn't know the show, so you don't fire the assistant.

Q. I ask you is it customary for the carpenter to select his own assistant? A. Yes.

Q. Did you select an assistant? A. Yes.

Q. Who was the assistant you selected? A. Joe, my son.

Q. And he was given a flyman contract? A. Yes.

Q. Your son never interviewed for the job, did he? A. No.

Q. Your son never spoke to Eddie Davis before he got [96] the job, did he? A. No.

Q. Didn't you tell Eddie Davis you wanted your son as your assistant? A. Yes.

Q. And the assistant in this case is called a flyman? A. Yes.

Q. Isn't that why you signed the contract on behalf of your son? A. No, because my son happened to be in Boston at the time. Instead of him spending the money to come to New York, I signed the contract for him.

Q. Wasn't your son hired only because you said you wanted your son as your assistant? A. I had the right to hire my assistant. He gave me the right to hire my assistant.

Q. Isn't that right, the carpenter gets in most every job a carpenter gets? A. Yes.

Q. If you got on to a job where an assistant is usually there, you can ask the man to get rid of the assistant— A. No, you don't generally do that.

Mr. Pollack: I don't see why counsel can keep his questions limited to the issues in this case rather than going into other shows—

[97] Mr. Arnold: This is an industry beset by precedent. We're faced with precedent here, it's an important thing in the theatre and precedent controls. I just want to point out the fact that this man selected his son and when he was terminated, the son was terminated as the assistant.

Mr. Pollack: That doesn't seem to be at issue at all.

Judge Sherman: Well, are you willing to concede that the point counsel is trying to make through this witness—

Mr. Pollack: Your Honor, I think it's our contention also that when the company fired Mr. Doucette, they also fired his son. It's our contention, of course, that the illegal motivation that was on Mr. Doucette, Senior's discharge would also be imputed for the reason of the discharge of the son.

Judge Sherman: I understand that, but I think counsel is trying to make the point and correct me if I'm wrong, Mr. Arnold, that the reason the company discharged Doucette, Jr. was because of the fact that it discharged Doucette, Sr.

Mr. Arnold: That's correct. When Doucette, Sr. was discharged, so was Doucette, Jr. We will also show additional reasons for Doucette, Jr., but I wanted to [98] bring out that one point.

Judge Sherman: In view of the testimony the witness has just given that Doucette, Jr. was selected by him to act as his assistant, in spite of the fact that respondent here concedes that Doucette, Sr. was an employee within the meaning of the Act, I still would appreciate briefs from counsel on this issue.

Mr. Pollack: We would litigate that issue. We could stipulate that Mr. Davis gave Mr. Doucette the

right to choose his flyman and he chose his son. I don't think we have to litigate that other issue.

Judge Sherman: It sounds to me very much as if Mr. Senior had the power to hire and if he did, it sounds very much to me as if he would be a supervisor within the meaning of the Act.

I realize that respondent said he is not, but the concessions can't obviate the fact.

Mr. Arnold: I would appreciate briefing that in my brief.

Judge Sherman: Which way? You have the opportunity to do it either way, but I was curious in knowing which way.

Mr. Arnold: Let me do the research on it first, your Honor.

Q. Now, you testified with respect to Mr. Vignale meeting [99] with some people on Tuesday, May 29th at the Schubert Theater.

Where was that? A. Schubert Theater, Cincinnati.

Q. You testified that this meeting took place in Don Antonelli's office; is that correct? A. Yes.

Q. Can you tell me who called the meeting? A. I called Mr. Vignale to come to the theater.

Q. Well, let's try to reconstruct what happened there, Mr. Doucette.

Are you sure the date was May 29th, 1973? A. May the 29th, yes, sir.

Q. And how long had the show been in Cincinnati? A. It came in on a Sunday, that would be May 27th.

Q. Came in on Sunday, May the 27th.

And when did you hang it? A. Monday, May 28th.

Q. When was the first performance? A. May 28th.

Q. Did anything unusual happen on May 28th? A. I don't know what you're asking for.

Q. Anything unusual with respect to the show was running, the show does what you're supposed to do, you do what you're supposed to do— [100] A. No, nothing unusual.

Q. Anything unusual happen on the 29th? A. That was the day Mr. Vignale came to the theater.

Q. Why did he come to the theater? A. He came to the theater to talk with management for the soundman.

Q. Well, didn't you say a few moments ago that you called Mr. Vignale? A. I called him up and asked him if he would come to the theater to settle an argument and talk this matter over.

Q. Did something unusual happen that caused you to call Mr. Vignale? A. No, nothing happened that day. I was asked to call him.

Q. By whom? A. Bob Weeden asked if I would call Mr. McNally.

Q. Did Bob Weeden have any physical affliction himself that prevented him from using the phone himself?

Mr. Pollack: Objection, your Honor.

Judge Sherman: Sustained.

Q. Why did Bob Weeden ask you to call Mr. Vignale?

Mr. Pollack: Objection, your Honor. I don't think this witness knows what motivation Mr. Weeden had.

Judge Sherman: Do you know why?

[101] A. Can I go back to Detriot?

Q. Go back to anyplace you want. A. The last night we were in Detroit was a Friday night.

Q. What date would that be? A. May 25th, a Friday.

Q. What happened there? A. Mr. Weeden got his notice to be relieved of his duties.

Q. How did you know that? A. I happened to be—I was in Cincinnati, Mr. Bob Weeden called me in Cincinnati and said they gave me my notice to terminate my employment.

Q. What were you doing in Cincinnati? A. I was doing the advance work there.

Q. When did he call you in Cincinnati? A. During the day.

Q. What date? A. That would be Friday—that would be May 25th or 26th, Saturday.

Q. Well— A. All right, it would be Friday, May 25.

Q. How are you so sure that it was Friday and not Saturday? A. Because I was in Detroit again to take the [102] show out.

Q. How long had you been in Cincinnati? A. I went in Thursday.

Q. You went in Thursday the 24th? A. Thursday night the 24th.

Q. And you were there on Friday? A. Yes.

Q. And you got a call on Friday in Cincinnati from Mr. Weeden? A. Yes.

Q. What did he say to you and what did you say to him? A. Mr. Weeden informed me that he got his papers that his contract was to be terminated.

Q. Did he tell you when it was effectively terminated? A He didn't give me a date, but I understood that it was about two weeks. He called me in the hotel on the phone and told me he was terminated.

Q. What else did he say to you? A. That's it. I told him that I would be back into Detroit Saturday morning and if he had anything—if he wanted to talk to the business agent there, he could call the business agent in Detroit.

Q. Was Mr. Weeden a friend of yours? A. He worked with me on another show and we were all—everybody in the show was friendly.

[103] Q. Did Mr. Weeden tell you why he called you? Did he ask you to do anything for him? A. No, he just told me he was fired and he thought it was unfair.

Q. He said he thought it was unfair? A. Well, whatever it was.

Q. Well, what did Mr. Weeden tell you? A. Mr. Weeden told me that he had got fired, he got his notice that they were going to fire him. I said there's nothing I can do for you, I'll be back tomorrow, I'll see you tomorrow.

Q. Did he say it was unfair? A. Well, I'll take that back. He might not have said that.

Q. That was the end of the conversation? A. Yes.

Q. And then you flew back to Detroit the next day? A. That would be Saturday morning.

Q. Where did you go when you got back to Detroit the next morning? A. To the hotel and then the theater.

Q. Did you see Mr. Weeden? A. Yes.

Q. Did you talk to him any more about the conversation of the day before? [104] A. Yes, we talked about it.

Q. What did he say to you? A. He asked me what I could do about it, or what he could do about it and I said I don't know, call the business agent in Detroit to see if it's all right.

Q. Did he indicate to you that he thought it was unfair? A. I don't know what he thought, but—

Q. Did he tell you that he felt it was unfair? A. I think so, yes, he thought it was unfair.

Q. Did he discuss any circumstances which caused him to be fired? Did he tell you why he had been fired? A. At that time, no.

Q. Why did he think it was unfair?

Mr. Pollack: Objection, your Honor.

A. I can't answer that for you.

Q. He didn't tell you that it was unfair? A. No.

Q. What did you do then? A. I said if you think it's wrong, talk to the business agent. Have the business agent come over and talk to him.

Q. That was the end of the conversation? A. Yes, I said you have to talk to the business agent. The IA has to take care of that, there's nothing we can [105] do ourselves.

Q. What was the next thing that happened? A. He talked to the business agent on Saturday, the business agent said the IA office is closed in New York—

Q. Now, how did you find out about this? A. Because I was told.

Q. By whom? A. By Bob Weeden.

Q. Who called the business agent, you or Mr. Weeden? A. Mr. Weeden did.

Q. You didn't call him? A. No.

Q. And you were standing nearby? A. Yes.

Q. It was a public telephone? A. Yes.

Q. Do you know what the name of the business agent was that called? A. Warren Wilson.

Q. And he was the business agent in Detroit? A. Yes.

Q. Did you talk to the business agent? A. Yes.

Q. Who spoke to the business agent first? A. He did and then he got me on the phone and he also [106] told me that the IA office is closed on Saturday, that he couldn't do anything. He couldn't find out no ruling on it.

Q. Ruling to what effect? A. That it's legal to fire a man for cause or whatever. He said he would have to talk to the office in New York.

Q. What else happened? A. This was Saturday and the office was closed. He said when you got to Cincinnati, call the IA representative in Cincinnati and let him come over and talk to management.

Q. Who did he say that to? A. He told me that while I had him on the phone. He told me to call the IA and have him come over.

Q. Warren Wilson told you to call the business agent— A. He said that that was the home of Ed Vignale, the business agent in—

Q. Did he tell you why—

Judge Sherman: Let him finish his answer.

A. He said that's his hometown, Mr. Wilson said call him at home, he should be at home and he would be the man to come over and talk to management.

Q. Mr. Wilson suggested that you call Mr. Vignale? A. Yes.

Q. Anything further happen in Detroit that day? A. No.

[107] Q. That was the 26th? A. That was the 26th.

Q. Anything further happen with respect to this case on the 26th? A. No.

Q. Did anything happen on the 27th? A. That was Sunday, no.

Q. Did you see Mr. Weeden on Sunday? A. Yes, we saw Mr. Weeden on Sunday.

Q. We? A. I saw Mr. Weeden on Sunday. Well, we all eat together and we all stay at the same hotel.

Q. Did anything happen on the 29th—the 28th, excuse me, I skipped the 28th. A. The 28th was the day we put the show on. We done the show and nothing happened on the 28th.

Q. The show performed for the first time in Cincinnati on the 28th? A. Yes, Monday night.

Q. And nothing happened with respect to this case on the 28th? A. No, sir.

Q. What happened on the 29th? A. On the 29th, Mr. Vignale came to the theater.

Q. Well, stop.

[108] Hadn't anybody called Mr. Vignale when they got to Cincinnati after the 26th? A. No. Mr. Vignale was called Tuesday morning after we had hung the show, after we had opened. He was called on Tuesday morning.

Q. The 29th—the 28th? A. The 28th or the 29th.

Q. The show opened on the 28th? A. And Mr. Vignale didn't come until Tuesday.

Q. How did he happen to come. A. I called him.

Q. When did you call him? A. It has to be—I'm pretty sure it was Tuesday morning, that would be the 29th.

Q. The 29th? A. Yes.

Q. And you didn't do anything on the 28th? A. No, we were working hanging the show.

Q. Where did you call Mr. Vignale from? A. I called him from my hotel. I called him at his home.

Q. At his home? A. At his home.

Q. What did you say to him and what did he say to you? A. I asked him if he could come to the theater, Bob [109] Weeden would like to talk to him and I was told by Warren Wilson to call him and have him come down to the theater.

Q. Was Mr. Weeden with you when you made this telephone call? A. No.

Q. What did Mr. Vignale say to you after you told him that you would like him to come down? A. He said I will come before the show starts Tuesday night.

Q. On that telephone call, was an appointment made? A. An appointment was made for him to come to the theater that night.

Q. Was an appointment made for Mr. Vignale to meet you or Mr. Weeden or anybody else at a particular time? A. He was asked to come to the Schubert Theater in Cincinnati to meet us there and see if I could arrange it with Don Antonelli and Frank Marino so he could sit and talk with them.

Q. Was there any particular time discussed when he could come? A. All I recall is that he would be there before the evening show.

Q. Did he ask you to arrange an appointment with Antonelli or Marino? A. He asked me if Don would be there and Frank Marino, [110] if we could talk to them and I said as far as I know, yes, but I would ask them if we could meet with them at that time.

Q. How did it happen that the meeting took place in Mr. Antonelli's office? Did you speak to Mr. Antonelli after you spoke to Mr. Vignale? A. Yes, I spoke to Mr. Antonelli and Mr. Marino and told them Mr. Vignale would be over that night before the show to talk to them.

Q. Did they ask you why he wanted to talk to them? A. Yes.

Q. What did they say and what did you say? A. Frank Marino asked me why and I said Bob Weeden wants to know what the reason was for firing him.

Q. And this meeting took place? A. This meeting took place Tuesday night.

Q. Your testimony was that you were invited to the meeting, that's what you said this morning. A. I didn't get to that point yet. This was the first meeting.

Now, the meeting—I introduced Mr. Ed Vignale to Don Antonelli and Frank Marino since he did not know them. I introduced them backstage and Don said let's go into my office and we'll talk there offstage. Then I was invited to go in with them.

[111] Q. Stop. That's what I'm asking you. Who invited you in? A. Mr. Vignale.

Q. What did he say to invite you in there? A. Nothing.

Q. Do you have any idea why he invited you in?

Judge Sherman: Have you finished your answer?

The Witness: That one, yes.

Q. Do you know why Mr. Vignale invited you in? A. Just to listen.

Q. You really didn't take part in that meeting, did you? A. Well, I asked one question while they were talking.

Q. And the question was? A. Would you please give us a reason why you're discharging Bob Weeden.

Q. That was the only participation you had in that meeting? A. Yes.

Q. And at that meeting, did Mr. Vignale indicate whether or not the firing of Weeden was legal or illegal? A. Not at that meeting. He couldn't give us—he couldn't say yes or no until he really called the New York office to get the okay on whether it was legal or not.

Q. And that's all that was discussed at the first meeting? [112] A. It was also discussed, Frank Marino wanted to fire Bob right away, that's it. He just wanted to get rid of him, pay him off and Mr. Vignale says I got to check to see if that's legal and Frank Marino wanted him to be paid off and told Don to pay him off and Don says, "I must check with my office to see if I'm allowed to do that."

The meeting ended after that that they would be back with the answers the next day.

Q. And the next day? A. The next day Mr. Vignale came in.

Q. Was that by prearranged appointment? A. No, that was from the night before, he had to come back the following day to give his answer.

Q. The night before, did he make an appointment to meet with anybody the next day? A. He told Don Antonelli and Frank Marino that he would be back at the matinee to give his answer, whether it was okay from the IA standpoint.

Q. What happened at the second meeting? A. At the second meeting, he told Frank Marino that he could let Bob

go, to pay him the money, that week's salary and another week's salary and to give him his week's vacation and when Saturday night came, that would terminate Mr. Weeden's contract. He could go wherever he [113] wanted to go from there.

Q. Did you participate in that meeting? A. I was invited in on the meeting.

Q. By whom? A. By Mr. Vignale.

Q. When were you invited into that meeting? A. When he went into Antonelli's office to talk with Frank and Mr. Antonelli.

Q. Did you participate in any way in any of the conversation at that meeting? A. No. I just listened at that meeting.

Q. You didn't answer any questions? A. No.

Q. Were there any other meetings in which Mr. Vignale was present? A. He came back Friday of that same week, that would be June the 1st, I believe. I think Mr. Weeden had called him this time.

Q. How do you know that? A. I'm just saying—I would say Mr. Weeden called because I didn't talk to Mr. Vignale, I thought everything was all right.

Mr. Weeden had heard from Don Antonelli in the afternoon or in the morning that he was going to Denver with us and do the show in Denver and leave from Denver. Since [114] the ruling was that he was to leave there Saturday night and that would have been it, the company had changed their mind and decided to take him into Denver. So, Mr. Vignale had to come back in and talk to management on that.

Q. How did you become involved in that? A. I had nothing to do with that part of it.

Q. Well, were you involved at all? A. No, when Mr. Vignale came to the theater at night to talk to Don Antonelli

and Frank Marino, he come to me and says—he says, "I want you to come into the meeting with me."

Q. Vignale said that? A. Yes, he said "I want you to come in and sit with me." I said, "I do not want to get involved." I said, "What is going to happen here is, if I go to the meeting with you, I'm going to get fired."

Q. You said that to Mr. Vignale on what date? A. That was a Friday.

Q. What date? A. Friday would be May 25th.

Q. And where did you say this to him? A. No, that would be June 1st, I'm sorry.

Q. You told Mr. Vignale, "I don't want to go to the meeting with you because if I do, I'm liable to get fired"? [115] A. Right.

Q. What did he say to you about that? A. He said, "I want you to come with me. I'm the representative and I'm telling you that you're going to the meeting with me."

Q. Did you go to the meeting? A. Yes.

Q. What made you say that you were afraid you were liable to get fired? A. I just had the feeling that—I don't know. I just had that feeling that I was going to be fired.

Q. Until that point, there were only two meetings that you attended with Mr. Vignale and Bob Weeden? A. Right.

Q. And at that meeting, all you did was ask the question "Why"? A. Right.

Q. You didn't agitate anybody or get agitated, did you? A. No.

Q. And two days later, you were suddenly afraid that if you went to another meeting, you were going to get fired? A. Right.

Q. Why? A. My feeling was that after the opening night in LA, [116] I wasn't needed anywhere. I said to Mr. Vignale, "If I go in here with you, after we open in LA, after the opening in LA, I'm going to get fired."

Q. Why the opening in LA? A. They needed me for the opening in LA.

Q. Was LA an open end engagement? A. Yes, it was a big opening for them.

Q. You didn't have a run of the play contract, did you? A. No.

Q. They could have fired you anytime? A. Right.

Q. If they fired you after the LA opening, they would have to replace you with somebody; right? A. Right.

* * *

Q. Isn't it a fact that the employer could have terminated you at any time, either before LA or after LA, without cause? A. Yes.

Q. So if, in fact, they were going to fire you after the LA opening, they didn't need an excuse, did they? A. No, they didn't need me any more.

Q. And that was the reason why you were afraid you [117] would get fired and that was the reason you said to Mr. Vignale that you were liable to get fired? A. Right.

Q. Had the employer ever indicated any dissatisfaction with your work? A. Never.

Q. Had anybody on behalf of the employer ever indicated to you that it was taking too long to hang the show? A. Never.

Q. Did anybody on behalf of the employer ever indicate to you that the stagehand costs on the show were too much? A. We talked about it, yes. That was a subject we talked about for the first six or seven weeks. That it was costing too much money to do the show. We must get it down in a one day—

Q. That was the hanging? A. Yes.

Q. The take-in? A. Yes.

Q. And we talked about this before, didn't we? A. Yes.

Q. And did anybody ever say that the show looked lousy? A. That was said once in Toronto.

Q. By whom? [118] A. By Maxine Fox.

Q. Who did she say it to? A. Don Antonelli called me at the hotel and told me to come to the theater.

Q. Can you tell us approximately when? A. That was the day before Good Friday, that would be a Thursday.

Q. Can you look at your calendar and tell us approximately what date?

Judge Sherman: That calendar gives the date of Good Friday, 1973, do you want me to read it to you?

Mr. Arnold. It was April 20, 1973.

Q. On April 19th, the show was playing in Toronto? A. Yes.

Q. For how long? A. Three weeks.

Q. And Don Antonelli called you on the phone? A. Yes, and told me to come to the theater.

Q. And did you go to the theater? A. Yes.

Q. Who did you see there? A. Donald Antonelli, Frank Marino, Maxine Fox was there and Tommy Smith was there.

Q. Who is Tommy Smith? A. The stage manager for the firm.

[119] Q. Where did that meeting take place in the theater? A. I came down to Don Antonelli's office in the front basement of the theater.

Q. Was everybody there when you arrived? A. There was quite a few people there, they were having a rehearsal.

Q. I mean in the office. A. Don Antonelli was there.

Q. Was Maxine Fox there? A. She was in the audience, they were going through a rehearsal at the time.

Q. Was Tommy Smith there? A. He was on stage for the rehearsal also.

Q. How long after you arrived did the meeting take place? A. About ten, fifteen minutes.

Q. Who was present at the meeting? A. Don Antonelli and Miss Fox came into it and said—

Q. I want to find out who was there. A. Don Antonelli, myself, Maxine Fox was there. I don't recall if Tommy Smith was there at that particular time.

Q. At the beginning of the meeting, were you alone with Don Antonelli? A. Yes, he called me downstairs alone.

[120] Q. What did he say to you? A. I talked to Don and he said Maxine said the sets are dirty, they should be fixed. He said call Eddie Davis in New York right away and let's see what we can do about it. I called Mr. Davis in New York and told him the sets should have been painted and touched up. He gave the okay to do it. That's if that was what Mrs. Fox wanted, he wanted the sets in perfect condition.

After talking to Eddie Davis, I talked to Maxine and Donald. I don't recall if Mr. Smith was there at that time. She said this was a road show, she didn't want it to be run like a bus and truck show. The painting was coming off. She said it should have been painted and some seats should have been reupholstered. I said we were going to do it, but we didn't have the money to do it in Detroit for the opening in LA. It was done the next day on Good Friday. We did the work she requested.

Q. That was the only complaint you ever got? A. Yes.

Judge Sherman: The reupholstering of the seats, was that the seats used onstage?

The Witness: Right.

Q. Was Don Antonelli with the show from the very beginning? A. Yes.

[121] Q. Was Frank Marino with it from the beginning? A. No.

Q. When did Frank Marino join the show? A. He joined

the show in Washington. I think the second week in Washington.

Q. Did you ever have a conversation with Mr. Marino with respect to cutting some of the sets and scenery out of the show? A. Cut it out of the show?

Q. Yes. A. No.

Q. Not using everything that you have? A. On one show, but we didn't fly it in and out. We let it sit on the floor, it was one move.

Q. What move was that? A. I don't know, but they were—maybe you're referring to Washington. We did not fly the hard legs in Washington.

Q. Why? A. We couldn't get them to work space-wise. We couldn't get them to work in and out. They only moved once at the beginning of the show and in Washington we could not work them in. He did ask why they could not work in and out.

Q. Who asked why? A. Frank Marino.

[122] Q. Did you ever tell Frank Marino that the producers had decided to cut the show after Boston? A. Not that I know of.

Q. Did you ever tell Frank Marino that the producers had decided to cut the show at any time? A. No.

Q. You never said that to Frank Marino? A. No.

Judge Sherman: By "cut the show", you mean to cut it off?

Mr. Arnold: Physically, yes.

Q. After you left New York with the entire physical show, after that, was there any part of the show that you did not use? A. We replaced a photo drop.

Q. Was there anything that you did not use? A. The only place I would say where it was physically impossible to use was in Columbus, we might have cut a hard leg out in Columbus. The theater was not big enough and it was not rigged.

Q. Is it a fact that you claimed at this hearing that the reason you were fired was because you interceded on behalf of Mr. Weeden when he was terminated? A. No, my thinking is that I was let go because I brought the IA representative into Mr. Weeden's involvement.

[123] Q. Your claim then is that you were terminated because you called Mr. Vignale and asked him to come in? A. Yes.

* * *

Q. Are there any other facts other than the telephone call that you made to the IA that you believe led to your discharge? [124] A. No, I think that was it.

Q. The telephone call? A. The telephone call.

Q. After Denver, did Mr. Weeden leave the company? A. Yes.

Q. His employment was terminated? A. Terminated.

Q. He got his vacation pay and all his salary? A. Yes.

Q. Do you know where Mr. Weeden lives permanently? A. His home is some place outside of Boston.

Q. Do you know where he went after Denver? A. He went to LA after Denver.

Q. How did he get there? A. He drove there with my son.

Q. In whose car? A. My son's car.

Q. Your son drove him to LA? A. Yes.

Q. Did he go to work for this company in LA? A. No.

Q. Did he go to work for anybody in LA? A. Yes.

Q. Do you know for who? A. He worked for Local 33.

[125] Q. Did he have that job before he left Denver?

Mr. Pollack: Your Honor, I object again. I don't see the relevancy of what Mr. Weeden—

Judge Sherman: I don't either.

Mr. Arnold: I will withdraw the question.

Q. Now, you testified about a telephone call that you had with Mr. Davis in New York. A. Which one are we talking about?

Q. After you were terminated in Los Angeles. A. Yes.

Q. Can you tell us approximately what date that telephone conversation was? A. Sunday was June the 17th, that would be June the 18th, Monday. It would be Monday June 18.

Q. You testified this morning—well, let me hear again, what did you say to Mr. Davis and what did Mr. Davis say to you? A. I asked Mr. Davis what was happening, why I was being fired—why me and my son was being fired and I told him I thought everything was going great.

His reason to me was that he fired me because I brought in Mr. Ed Vignale, the union man, into Cincinnati and he thought I should never have got involved in that.

Q. Those were Mr. Davis' words? A. In that sense, yes.

[126] Q. Well, see if you can recall his exact words, it's very important. A. Mr. Davis said he was mad at me for bringing the IA representative into Cincinnati, that was causing him troubles.

Q. Did he say what kind of troubles? A. No. He said I should have minded my own business and I should have never got into that part of it. He was mad at me because I brought the IA representative in.

Q. That's what he said? A. Yes, I had no business doing that.

Q. Did he ever indicate to you that he was unhappy with your work? A. Never. But at that—as I was talking with him on that same day on the phone, he said he was mad at me for what I was doing.

Q. Didn't you testify this morning that he said "I was going to fire you some weeks ago"? A. Yes.

Q. Did he say that? A. Yes.

Q. What did he say? A. He said I was going to let you go three weeks before, three weeks earlier, but I needed you to make the [127] opening in LA and I don't need you now. I said, "Why are you firing my son?" And he said, "Because he's your son".

Q. He didn't say because he's your assistant? A. No, he said because he's my son.

Q. Now, you testified to the fact that your duties with Grease when it was running, required very little work during the performance; is that correct? A. Yes.

Q. It was mostly to look around? A. And maintenance.

Q. I'm talking about during the performance, while the curtain was up.

You had no cues? A. No.

Q. You had no assigned duties while the curtain was up? A. No special assigned duties.

Q. There were crew members who had assigned duties? A. Yes, who did the actual—

Q. Are you familiar with the show in New York? A. No, I'm not.

Q. You have seen the show in New York, haven't you? A. Yes, from out front.

Q. You testified that when you were hired, Mr. Davis [128] said to you that you would get a raise in about six weeks? A. I asked him if I would get the raise after six weeks and he agreed to that.

Q. You say you finally got the raise in the week of March the 27th? A. Yes.

Q. And that would be about what, 12 or 13 weeks after you started? A. Yes.

Q. Did you ever ask for the raise before the week of March 27th? A. Not for myself, no.

Q. You never asked for the raise? A No.

Q. Why did you not ask for the raise? A. Because I hadn't felt that I had the hours cut down enough that I deserved the raise.

Q. And you never asked for it? A. No, sir.

Q. You never asked Eddie Davis for a raise before that date? A. For me?

Q. For yourself. A. No, sir.

[129] Mr. Arnold: I have no further questions of this witness.

Judge Sherman: Any redirect?

Mr. Pollack: Yes, your Honor, just a few questions.

RE-DIRECT EXAMINATION

Q. (By Mr. Pollack) Mr. Doucette, I would like to direct your attention to the conversation that you had on the telephone with Mr. Ed Davis.

You testified, I believe, that that was on June 18. Do you recall the telephone conversation that I am referring to? I'm going to ask you some questions with reference to that conversation. A. I recall it.

Q. Now, during that conversation, was there any discussion of a yellow card or the way yellow cards were filled out? A. At that time, no, sir.

Q. During that same conversation now, was there any discussion about the sets in Baltimore or the soft legs or anything with respect to those sets in Baltimore? A. No.

Q. Again with respect to the very same conversation with Mr. Davis, was there any discussion in that conversation about the advance trips that you made to Detroit? A. No, sir.

[130] Q. Now, I would like to direct your attention to the testimony you gave about the yellow card, and I would like you to explain for us your statement that by leaving your name off the yellow card you saved the company money.

Could you explain to the Judge how that happened, how that would save the company money? A. If I was on the yellow card, we don't go by names, we go by numbers and one column calls for so many road men that must be in the theater at all times. On this one here, I omitted my number and put a "1" instead of a "2" and at the bottom of the card, I put "Advance man". That's to show that I was holding a contract with the show but I could go ahead and come back without being replaced.

So, by putting the "1" on the card when I went to the next town to do the setup, they did not have to replace me with a local man to fill in for me when I went to the next town.

Also, on the yellow card is how many roadmen that travel with the show that must be present in the theater at all times. That's the first column.

On the second column, it says how many local men I must have from the city we're going to be in and work on the show to set it up.

On the other column, it says how many local men I [131] must have employed—that the company must employ to operate the show once it's open and in the other column they have the amount of money that are used to dismantle the show to move it to the next town.

All of that is done in numbers, no names. They call so many men from one local to work this.

Q. Now, I would like to direct your attention back to December of 1972 when you were in Mr. Davis' office at the time the contract was filled out for yourself and your son. I would like you to tell us what was said in that conversation about your son going to work for the company. A. I talked with Mr. Davis in his office at Theatre Now. I wanted more money than he wanted to pay me and I wanted another assistant. I wanted to pick my own assistant, that was my son

at that time. We talked and Mr. Davis wasn't sure whether he would let me have my assistant—

Q. Please tell the Judge what Mr. Davis said. A. Mr. Davis and I, we sat and talked. I wanted a certain amount of money and he said he didn't want to pay that.

I said, "Well, I'll make a deal with you. I'll work with you and that in six weeks, if I don't have the show down and the hours saved, to save you money, you don't have to give me the raise, but if I get the show [132] down where I save you money, you give me my extra money".

I said, "I want my son as my assistant." I said I wanted a certain amount of money for him.

Mr. Davis thought that was too much money. We talked about that and he decided against it.

Judge Sherman: Against what?

The Witness: Against taking my son. He wanted to get me another man. I said no, I want my son, because I have to work with the man, I didn't know who he was going to get me.

Finally, he agreed to take my son. My son was hired with the same idea that if in six weeks the show was cut and we saved them money, he would get an automatic $25 a week raise. I signed the contracts.

Mr. Davis wanted his show done in one day. I said if possible, if it can be done, I'll do it. I said it will take me three or four moves to find out how I can cut the show to make the show work to do it in that amount of time. He agreed to it, we signed contracts and I left.

Mr. Pollack: No further redirect, your Honor.

Judge Sherman: Any recross?

Mr. Arnold: Yes, your Honor.

RE-CROSS EXAMINATION

Q. (By Mr. Arnold) You just said it would take three [133] or four moves to see how "I could cut the show"? A. Yes.

Q. Did you ultimately cut the show to make it work? A. I'm not talking about it physically. I'm talking about moving the pieces faster.

Q. And not to cut? A. Right. To assemble them faster than in the shop.

Q. Calling your attention to General Counsel's Exhibit 3, will you look at the third line where the name Theatre Now appears, the third line of your son's contract. Did you fill in those words? A. Yes.

Q. Did you ask Mr. Davis if Theatre Now was the employer when you filled it in? A. I assumed it, I did not ask him. I made it out in his office and he signed it that way.

Q. If you look at Exhibit 2, you didn't put anything in? A. No, I didn't put it in on that.

Q. Now, we were talking about the yellow card a few minutes ago and I hope we don't get confused—

Judge Sherman: If there's an example of a yellow card in the courtroom, perhaps it would be helpful.

Mr. Pollack: Do you have one, Mr. Doucette?

The Witness: Yes.

[134] Q. You said that by having your name on the card, when you went out on an advance, they didn't have to replace you; is that what you testified to on redirect? A. No, sir. I testified that by not having my name on the yellow card—would you like to—

Q. Please. A. I'm trying to explain it.

Q. I'll let you explain anything you want in a moment. A. Okay.

Q. You said that because of the way you filled out the yellow card, that when you went out on an advance, they did not have to replace you with a local man. A. Right.

Q. That is what you said a few moments ago? A. Right.

Q. This morning you said, I believe, that before you could go out on an advance, you had to check with the local to get their approval because they wanted to hire another man. A. No. Anytime I would leave the theater, I would always tell the man I was going to leave the theater.

Q. What man? A. The steward or the house carpenter or whoever happens to be in charge at the time. I would always tell them that I'm going, where I'm going and I'll be back in [135] a day.

Q. This morning you testified that you needed somebody's approval because— A. I had to tell the local that I was going to leave and if they said okay, that's fine.

Q. Could they say no to you? A. They couldn't say no, they could say go, but we'll put a man in your place.

Q. You said the yellow card precluded them from putting a man in your place. A. I'm agreeing with you, yes.

Q. You came and went on advances as you saw fit, didn't you? A. Yes.

Q. There really wasn't anything for you to do once you had the show hung? A. I could go on advance.

Q. Because of the way you had the thing set up? A. That's right.

Mr. Arnold: No further questions.

Mr. Pollack: Nothing further of this witness.

Judge Sherman: Can I take a look at these yellow cards, please?

Did you ever tell the company why it was you were filling out the yellow card in the way in which you were [136] filling it out?

The Witness: Yes, I told Mr. Davis in his office that I was going to put just one number in the block so when I went ahead, I can go and they would not replace me.

If I put "2" in there, and if I didn't show up, a man would automatically take my place.

Judge Sherman: When did you tell Mr. Davis that?

The Witness: He was told that around the first week in Boston. That would be around Christmastime. I explained it mostly to Don Antonelli and then I spoke to Mr. Davis about it.

Mr. Pollack: Your Honor, may I follow up on that?

Judge Sherman: Surely.

Mr. Pollack: I would like to know when and where that conversation was.

A. In the Schubert Theater when we were getting ready to make the yellow card out.

Q. Was anybody else present aside from you and Mr. Antonelli? A. No, it was in his office.

Judge Sherman: Off the record.

(Discussion off the record.)

Judge Sherman: Back on the record.

Mr. Reporter, would you please mark these cards [137] Judge's Exhibits 1 and 2 for identification.

(Whereupon the documents referred to were marked Judge's Exhibit Nos. 1 and 2 for identification.)

Judge Sherman: I believe you had a couple more questions you wanted to ask of this witness, Mr. Pollack?

Q. (By Mr. Pollack) Mr. Doucette, you just identified a conversation that you had with Mr. Antonelli. Now, I would

like you to tell us what was said in that conversation? A. This was in Boston?

Q. The conversation that you said was in Boston and it concerned these yellow cards. A. After the opening night with any show and that's when you sit and make out the yellow card, that tells you how many men you're going to use for the rest of the run of the show for as long as the show runs.

I saw with Mr. Antonelli and we set the yellow card up the way it is now.

Q. I just want to get this clear.

Was there a yellow card at the time? A. No, that would be our first one that would be made after opening night in Boston.

> Judge Sherman: If I may break in here, Judge's Exhibit 1 for identification, is this a copy of the yellow card that you made out opening night?
>
> [138] The Witness: I would say this is the one—it's from New Haven, but they are all made identically the same as this one.

Q. During this conversation with you and Mr. Antonelli, was there a blank card or was there a yellow card there at the time? A. At the time, no, we were just setting up how we were going to do it.

Q. Tell us what was said. A. We set up how many men—I think we had to stay under 10 men for working the show at all times. We sat and we figured out—I told him I thought the yellow card could be and we may just be able to work it. We figured the amount of men that we needed for the show. Since my road contract said carpenter on it and my son's contract said flyman on it, that meant that I should be one of the numbers on the yellow card and my son should be one of the numbers on the yellow card. Otherwise, what we should have

done was to have new contracts made from the IA office to change that. I told Don I'll make it with one man on, I'll see if the IA accepts it that way.

I made the card out before we got ready to leave to mail to the next town which would be Philadelphia.

After I made the yellow card out, I had to get the [139] business agent of Local 11, that's Boston, he and the steward, he must come and check on the amount of men that are working the show to see if I have enough men to operate. When he agreed that I had enough men to operate the show, he would sign the yellow card and this yellow card—one would be sent to the next town that we would go to, he would keep one and I would carry one into wherever we went and I would give it to the business agent when he was there in the morning.

I told Don, if I don't put the number down there on there, maybe we can save money by not going on the yellow card and that's what we tried.

Q. Was there—in that conversation, was there any conversation of an advance man? A. I said if I become the advance man, you will not have to replace me when I leave the theater to go to another town to do the work. You don't have to put a man in my place to replace me on the job. We agreed to that and that's how we tried it. That's how the yellow card was set up, the first one.

* * *

[140] Judge Sherman: Mr. Doucette, what are these cards?

The Witness: This tells us the amount of men that we'll use to travel that show, the amount of men it takes to put a show on, the amount of men it takes to run a show once it's opened and the amount of men that we'll need to dismantle a show and take it out of the theater.

Judge Sherman: The first column is—

The Witness: Roadmen, the people who travel with the show under contract to the company.

The second column says how many men we used to put the show together, to put it up, for an opening.

[141] The third column where it says "performance", that's the amount of local men it takes to run a show once it's up and open.

Where it says "Put out", that's the amount of men it takes to dismantle a show and put it in a truck to move it to the next town.

Judge Sherman: All the yellow cards, the printed matter are all the same?

The Witness: Yes.

Judge Sherman: Are these original yellow cards, or are they copies of something?

The Witness: They are all the same.

Judge Sherman: I mean the writing on them, were these written in connection with the particular show as indicated?

The Witness: With Grease Company. Every show has a different yellow card.

Judge Sherman: I understand from the off the record discussion that there are, in fact, at each location three of these cards that are filled out; is that right?

The Witness: Yes.

Judge Sherman: What happens to the three copies?

The Witness: I keep one, the business agent takes two. One goes back to the International office in New York, and the other one goes to the Local file in whatever [142] town I left. The one I keep, when I go to the next town, I carry it with me. If the man wants it, he'll ask me for it; if he doesn't, it stays in the drawer.

Judge Sherman: By "the man", who do you mean?

The Witness: The steward or the business agent at the next local. He'll ask me "Do you have one with you?" I say yes and show it to him. If he doesn't want it, I don't show it to him.

The next one goes to the business agent's home in each local and he's the one who calls a certain number of men to be at the theater at a certain time.

Now, the house carpenter or the steward may not have seen the card and he would like to know if I have the 12 men in the right departments, and he would say let me see the one you're carrying.

Judge Sherman: And these particular cards are cards which you made out and kept because the steward didn't want them?

The Witness: That's right.

Judge Sherman: Now, you have listed on both of these cards, I think, under "Carpenter on tour" the number 1. And then you have under "Remarks", you have "1 advance man". And you put "1", who I assume is your son and by adding one advance man at the bottom, the only number of carpenters who had to be employed during a performance [143] were your son plus two more people, that's the performance group; right?

The Witness: Yes.

Judge Sherman: And if for some reason or other you were not present during a performance, but were acting, doing advance work elsewhere, nobody else would have to be hired to make up the number 3 even though, in fact, there are only two carpenters on duty at the time; is that right?

The Witness: Yes.

Judge Sherman: Did you explain this to management?

The Witness: Yes.

Mr. Pollack: Your Honor, I think there may be confusion about that, so I would like to just clarify it.

Judge Sherman: By all means.

Q. (By Mr. Pollack) In the columns marked carpenter and there's a number 3 on there for performance, who would those three— A. Under 3 for performance, that's the local help, the local stagehands.

Q. That does not include the flyman? A. No.

Mr. Pollack: That's why I asked the question.

Judge Sherman: Isn't the flyman included at all [144] in the performance figure?

The Witness: No, he's a local man.

Judge Sherman: In other words, the total number to be on duty according to this card, would be four?

The Witness: Yes.

Judge Sherman: If you had included yourself as a carpenter, it would have been five?

The Witness: Yes.

Judge Sherman: Thank you very much for your elicitation, Mr. Pollack.

Mr. Pollack: The first column marked "On Tour" Mr. Doucette, that would be the only place on that card where the touring crew would show up?

The Witness: That's right.

Mr. Pollack: They would not be in the columns marked "Take in" or "Performance" or "Take out"?

The Witness: No. On tour it's the contract men, the ones on tour and all the rest is the local help hired in each town.

Judge Sherman: Well, did the company ever complain to you about your action in listing yourself

separately as an advance man? Did the company ever complain to you about that?

The Witness: No, I was happy. I was saving them money by not being replaced.

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[146] EDWARD J. VIGNALE * * *

Direct Examination

Q. (By Mr. Pollack) What is your occupation? A. I'm an International representative for the IATSE.

Q. And how long have you been with them? A. As a representative?

Q. Yes, as a representative. A. Since 1967.

Q. And were you employed by the union in another capacity prior to that? A. Yes, I was employed by Local No. 5, Cincinnati Stage Employees as a business agent nine and a half, ten years previous to that.

Q. What is your home station now? [147] A. Cincinnati.

Q. Could you briefly tell us what your job duties are as an International representative? A. Well, I go out on assignments out of the New York office, assist in negotiations of contracts for local unions, solve problems where there are problems and troubles in different unions or shows, whatever comes up.

Q. Did you ever participate in any meetings of any representatives of management of the show Grease? A. Yes.

Q. And when did you participate in such meeting? A. May the 29th, May 30th and June 1st, I believe it was.

Q. Directing your attention to the first meeting, the May 29th meeting, where was that? A. Schubert Theater, Cincinnati, Ohio, backstage.

Q. Who was present at this meeting? A. From the Grease Company?

Q. Okay, the Grease Company first. A. Grease Company first?

Q. Yes. A. Mr. Marino and Mr. Antonelli.

Q. Was anybody else present besides? A. Mr. Doucette.

[148] Q. And yourself? A. Yes.

Q. Anybody else? A. No. But I had a meeting with Mr. Weeden before.

Q. I want to direct your attention to the meeting with the four people present whom you just identified.

Please tell us what was said at this meeting and identify who said it. A. Well, we went into Mr. Antonelli who was the company manager, who I had known before, to discuss the firing of Mr. Weeden. I had never met Mr. Weeden before—

Q. Did anybody introduce you to Mr. Marino? A. Yes, Mr. Doucette or Mr. Antonelli. I knew Mr. Antonelli from previous shows.

Q. Please tell us what was said. A. I asked why he was being fired—

Q. Why Mr. Weeden was being fired? A. Yes, why Mr. Weeden was being fired. And the only thing I could get was, incompetency.

Q. Who said that? A. Mr. Marino.

Q. What else was said? A. There was quite a bit of discussion about it. We had discussed how long the show had been out, I believe [149] it was in its 21st or 22nd week, and I found a new contract which we had just signed in our New York office that was after 26 weeks he receives a week's vacation and this made me wonder.

Q. Did you say anything about that at the meeting? A. Yes, I think I did. If I didn't at that meeting, I did at the following meeting the next day.

Q. Do you recall anything else said at this first meeting? A. No, that was the general discussion.

Q. Did Mr. Doucette say anything at the meeting? A. No, just introduced us and I think maybe he did ask a question, I don't recall, asking about Mr. Weeden's firing. I did most of the talking and Mr. Marino did the other talking.

* * *

Q. Do you recall any discussion as to why Mr. Doucette was at this meeting? A. No, I don't recall it being brought out. Why he would be at the meeting would be because he had called me and I had told him when I talked to him on the phone, [150] to go ahead and set up a meeting with the company manager and Mr. Weeden.

Q. And when was the second meeting? A. The second meeting was the following afternoon, the following matinee on the 30th, I guess.

Q. Where was that? A. Schubert Theater, backstage.

Q. Who was present? A. The same four people.

Mr. Arnold: Could you identify them, please?

The Witness: Mr. Marino, Mr. Antonelli, Mr. Doucette and myself.

Mr. Arnold: And not Mr. Weeden?

The Witness: That's right. I had talked to Mr. Weeden. The show was going on so Mr. Weeden had to be at the sound controls.

Q. Could you please tell us what was said at this meeting? A. Well, at this meeting I had talked to my New York office and—I talked to Walter Diehl earlier in the morning. He gave me instructions to go check the theater, the equipment that was being used, talk to the head electrician to find out what was going on with this.

I do so, and then I went to the meeting.

First I called Walter Diehl and he said I cannot [151] get the man his job back but we can get the week's vacation.

Q. Was this mentioned at the meeting, the second meeting? A. Pardon me, I skipped one thing.

Mr. Diehl said the notice was given out on a Wednesday, it had to be given out on a Sunday, which was the end of the week.

Q. I would like you to direct your attention to the second meeting and tell us what was said at the second meeting. A. We went in the room and we sat down and I told Mr. Marino and Mr. Antonelli and Mr. Doucette was there, that we could not get Mr. Weeden's job back. I talked to the New York office, but he will be paid according to the New York office through December—through the December performance, the following week.

Q. What month was that? A. This would have been June—

Q. You just said December and I'm sure you misspoke. A. Oh, I'm sorry. I meant to say the Denver performance. That he would be paid through the Denver show and he would get one week's vacation and Mr. Marino said, "I don't know about the vacation, I don't know anything about it."

[152] I said, "I just spoke to Mr. Diehl and that's the way it is," and he said to me, "Well, we don't need him for Denver, he's done here as of Saturday night."

I said, "As long as you pay him and give him his vacation, it's fine with me."

Q. Did that end the meeting? A. That ended the meeting and I stayed until the show was over because Mr. Weeden was up in the box. The show was over about 4:30, a quarter to 5:00 and I told him what transpired, what his status was.

Q. Now, there was a third meeting; is that correct? A. There was a third meeting and that was on a Friday, which would have been June 2nd, I guess.

Q. I think the calendar says June 1st was Friday. A. It was Friday.

Q. Where was this meeting? A. The same room, same room.

Q. Same four people? A. Mr. Marino, Mr. Antonelli and Mr. Doucette and myself.

Q. Now, please tell us what was said at this meeting. A. Well, the subject that was brought up to me was that Mr. Weeden had to go on to Denver and work out the week's engagement.

Q. Who said this? [153] A. Mr.—well, I knew it before that from Mr. Weeden and Mr. Marino said this.

No. He did say it, but I'm getting ahead of myself.

When I walked in the room I said to Mr. Antonelli, "You told me he was done Saturday. Why are you prolonging it?" He said, "I told you nothing of the sort."

And Mr. Marino said, "I told you that."

I said, "Why are you waiting until now to tell me that?"

He said, "I just got a hold of my New York office and the man has to work in Denver." That was Marino.

Q. Did you answer Mr. Marino? A. I said I guess he would have to work in Denver as long as he was being paid for it.

Q. Did you have any conversations with Mr. Antonelli or Mr. Marino or Mr. Davis or any other official of Grease concerning Mr. Doucette's discharge? A. No.

* * *

CROSS EXAMINATION

(By Mr. Arnold) * * *

[155] Q. Is it the ordinary function of a carpenter on a road show to be responsible only for the take in and take out

and not be responsible for day to day performances? A. No, he's responsible for the performances.

On some shows, he may be working different pieces or directing moves on the stage according to the necessity.

Q. Who determines the necessity? A. It's when the show starts and the yellow card is made out by the heads of the departments and the steward in the town or the business agent in the town, wherever the show is set.

Q. Does the master carpenter determine which stagehand does what during the working of a show? A. Yes, in carpentry department, yes.

* * *

[156] Q. Now, certain work must be done.

Who is responsible for saying who does what insofar as the carpentry department is concerned? A. The carpenter.

Q. The master carpenter? A. Yes.

Q. Who determines how many men are required to do those functions? A. The master carpenter with the—it has always worked out between the company, on the take-in of the show, it's always worked out between the master carpenter and the local business agent or maybe an IA representative in some cases where there's difficulty.

* * *

[157] Judge Sherman: Well, I was actually talking about, could the company and the master carpenter so arrange matters that the actual labor of the master carpenter would not be necessary while the show was simply being performed?

The Witness: Oh, yes, this happens. Maybe he directs work. In fact, it will happen in most cases. He will direct work, he will give cues to men, the local men.

Judge Sherman: But without physically moving anything?

The Witness: Yes, it happens.

Mr. Arnold: Your Honor, there's another question that I have for this witness.

Judge Sherman: Okay.

Q. (By Mr. Arnold) Mr. Vignale, Mr. Doucette has testified while you were sitting in this courtroom, with respect to the fact that you invited him into the meetings with Don Antonelli and Frank Marino in the Schubert Theater in Cincinnati; is that a fact? [158] A. That's a fact, yes, I did.

Q. Why did you invite Mr. Doucette in those meetings? A. Well, it has always been the man that handles the yellow card, the carpenter is like the *ex officio* head of the crew, like the steward of the crew, if there's problems. Each department has their department head, but if there's any particular department with respect to talking to management, talking to the union, getting back and forth, he has a responsibility, he is sort of the steward of the crew in name like and I figured that Joe had called me about Mr. Weeden and I know Joe over a period of years from coming into town.

Q. Had you spoken to Mr. Weeden just before you spoke to Joe on the phone? A. No, at the theater.

Q. Mr. Doucette said that Weeden called first and he got on the phone. A. No, that was in Detroit.

Q. In Detroit, yes. A. Well, I am not in Detroit, that was—I'm in Cincinnati.

Q. Did you hear Joe testify to the fact that he stated to you that "I don't want to go into the meeting because I'm afraid if I do, I'll be fired"? A. Well, not in those words. He said, "I don't want [159] to go in because I'm getting too deeply involved because I'm afraid I'll be fired."

Q. What did you say? A. I did not think it possible and I said, "Oh, Joe, you're kidding".

Q. And you asked him to come into the meeting anyway? A. Yes.

Q. Did he say anything to you about Los Angeles in the same conversation— A. Yes, he said, "After we go into LA, they don't need me, they are going to have a run there."

* * *

RE-DIRECT EXAMINATION

Q. (By Mr. Pollack) Are you familiar with yellow cards? A. Yes.

Q. In your former capacity as business agent, did you ever check yellow cards? A. I checked them. I made them out as a roadman. I did it for the last 20 years.

Q. I would like you to examine Judge's Exhibit 2 and I would like to ask you a question.

If, in your experience with these cards, if it would save the company money if a smaller number was [160] put down in the column for carpenters and the carpenter listed as the advance man?

* * *

A. By being an advance man, it would save the company money.

Q. Could you explain how that saves the company money? A. Well, you got your show, you hang your show. In some shows the carpenters have cues galore. In some there are very few. On this show, the only cues were to come in at 8:00 o'clock and that's about it. If he's on here on tour as a carpenter, the way he should have been, he has no right to miss a performance in a town under our International by-laws without putting somebody in his place.

He can go to another town, but as long as he's back for the performance, the company doesn't have to pay anybody.

* * *

RE-CROSS EXAMINATION

* * *

[163] The Witness: Can I ask a question?

Mr. Arnold: Yes, you may.

The Witness: How many men worked on the fly floor on this show?

Mr. Arnold: Two.

The Witness: If it was two men on the fly floor, Joe Doucette saved you money.

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[201] **Excerpts of Stenographic Transcript of Testimony at Hearing of September 20, 1973.**

* * *

[203] PROCEEDINGS

JOSEPH DOUCETTE, * * *

Direct Examination

Q. (By Mr. Pollack) Mr. Doucette, did you ever work for The Grease Company? A. Yes.

Q. When did you work for them? A. I started working for them December 22nd or 23rd, in Boston.

Q. What year was that? A. 1972.

Q. When did your employment with the company terminate? A. June 17, 1973.

Q. What was your job at the company? A. I was fly man.

[204] Q. Mr. Doucette, I show you what has been marked as General Counsel's Exhibit 3 and I ask you if you have ever seen that document before. A. Yes.

Q. When did you first see a copy of that contract? A. My first day with the company in Boston.

Q. You didn't sign that contract yourself, did you? A. No.

Q. Did you know that your father was going to sign the contract for you? A. Yes, I did.

Q. Did you give him permission to do so? A. I have given him permission a number of times to do it for me.

Q. Were you later given a copy of that contract? A. Yes.

Q. What did you do with that contract? A. I kept it in my wallet and had it with me at all times.

Q. While working for the show? A. Yes.

Q. Mr. Doucette, do you know Don Antonelli? The company manager of the Show Grease? A. Yes, I do.

Q. Did you ever have a conversation with Mr. Antonelli [205] in which the subject of your discharge was discussed? A. I had one conversation with him about that on the night I was discharged in the Schubert Theatre in Los Angeles.

Q. Was anybody else present? A. No, sir.

Q. Where in the theatre was it? A. Over at the fly floor.

Q. Were you working at the time? A. The show had just ended.

Q. Please tell us what was said. A. Mr. Antonelli came up to me and he said, I'm sorry for what has happened. I am going to miss you and your father and then he said his goodbyes.

Q. Did you say anything in that conversation? A. I said I understand, don't really worry about it. I'll get another job.

Q. Did you have any conversation with either Mr. Eddie Davis or Frank Marino about your discharge? A. No, I never did.

Q. How did you learn that you were fired? A. My father told me.

Q. And when did he tell you this? A. It was June 17th, just about halfway into the second act.

[206] Q. Was this in the theatre in Los Angeles? A. Yes.

Q. Was anybody else present? A. No. My father pulled me off to the side.

Q. What did he tell you? A. He said we've been fired. They have paid us off and he really didn't quite believe it.

Q. Was anything else said in that conversation? A. Nothing really more than except as to what we were going to do. We were going to leave and getting our stuff out of the theatre.

Q. When you worked for Grease Company did you ever receive a raise or a bonus? A. I received both.

Q. When did you receive a raise? A. I received a raise in Baltimore, the first week in Baltimore.

Q. What month would that be? A. The end of January, beginning of February.

Q. How much was the raise? A. $25 a week.

Q. Did you have any conversation with Mr. Antonelli in which this raise was discussed? A. Just at the end of one show, I am not sure of the date. It was the same date I found out about the raise—

[207] Q. Was there anybody else present? A. Not at this time. It was at the end of the show and there were people present who were leaving.

Q. Was this at the theatre in Baltimore? A. Yes.

Q. What was said? A. He said, you have a $25 raise and I expect you to earn it now.

Q. How much was the bonus? A. $25 also.

Judge Sherman: Just one $25 payment?

The Witness: No, on the bonus it was that every time we moved into another city, we got a bonus if we made it in the time limit specified.

Some people received bonuses. I was one of the people who received a bonus for every move.

If we made it within the time limit specified, we got a $25 bonus.

Judge Sherman: If you managed to hang the show in one day you got a $25 bonus?

The Witness: Yes.

Q. When did you first receive a bonus? A. In Columbus Ohio.

Q. What month would that be? A. March, I believe. I am not sure of the date. I [208] would have to look at a schedule.

Q. I will refresh your memory with respect to the date. I show you this schedule—

Judge Sherman: Any objection, Mr. Arnold?

Mr. Arnold: No objection.

A. It was the week of February 19th.

Q. Did you receive the bonus for all the moves after Columbus— A. Yes.

Q. Did you receive a bonus for the move into Los Angeles? A. Yes, I did.

* * *

CROSS EXAMINATION

Q. (By Mr. Arnold) You were hired as a fly man; is that correct? A. Yes.

Q. Tell me what a fly man is. A. A fly man is responsible for bringing the pieces, the scenery, the grid work and iron work in on time and taking it out on time.

He is responsible for seeing that the scenery is [209] working at all times, is set up properly, maintained properly and taken down properly.

Q. You are talking about hanging scenery.

Is that correct? A. I am talking about all scenery since I did all scenery with this show.

Q. Is the fly man part of any particular department? A. He is the carpenter department.

Q. Is there a head of the carpentry department? A. Yes, there is.

Q. Who is the head of the carpentry department? A. My father technically was the head of the department in the way the yellow card was written.

Q. On the job who is the head of the carpentry department? A. The head carpenter.

Q. And your father was the head or master carpenter? A. Right.

Q. And part of your father's job was to instruct all the people in his department? A. I would not say instruct anybody. He didn't really teach—

Q. When I say instruct, I didn't mean in the connotation of teaching.

I mean to tell them what their duties were.

[210] Mr. Pollack: I object.

A. He told them what their duties were.

Mr. Pollack: I think he is going beyond the scope of direct.

Judge Sherman: I will allow it.

Go ahead.

Q. How many people were in the carpentry department? A. Two.

Q. Who were they? A. My father and myself.

* * *

Q. Were those two permanent people in the carpentry department? A. Two people on contract on tour.

Q. And more people were added to the carpentry department as you got to a particular location? A. Right.

Q. Were the same number of people added to the carpentry department each time? A. No.

Q. Who determined the number of people to be added [211] to the carpentry department? A. My father.

Q. And can you tell us from that schedule if you recall how many people were added to the carpentry department at each stop or tell me which stops—was it different in all stops or was it just a few that were different? A. Just a few were different.

Q. What was the normal number of people added to the carpentry department? A. We had 12 people worked the put-on, three people worked the show, 12 people worked the put-out. These were local people, not on contract.

Q. The three people who worked the show, was that number changed in any particular location? A. It was changed in a couple of moves because of the theatre conditions we were playing.

Q. Was it more or less? A. More. We could never go below the yellow card.

Q. What were the locations where more people were used for the performances? A. One was Toronto.

Q. How many people were there? A. We had four people in the carpentry department working the show.

Q. Plus the two on tour? [212] A. Yes.

We had the same number of people working the put-in and the put-out.

Q. I am only concerned at this time with working the show.

What other city was the number changed? A. New Haven.

Q. What was the number changed to in New Haven? A. The same.

Q. Four people.

Who determined the number of people that were needed? A. House conditions would determine that and also a consultation between the stage manager, local business agent or business steward and my father.

Q. And how were these local people, whether it be three or four, hired for the duties? A. I don't know.

Mr. Pollack: Objection.

Judge Sherman: What ground?

Mr. Pollack: It is not within the knowledge and scope of the witness.

Judge Sherman: He said he didn't know any way.

Mr. Pollack: I guess my objection had some merit to it.

[213] Q. Do you know how they were hired? A. Through the local union in the city we were playing.

Q. Was it done on a shape-up? A. What do you mean?

Q. Certain people were called in in the morning and— A. I don't know.

Q. When a person was hired as a carpenter, did he usually continue with the show while it stayed in that city? A. We liked it that way but sometimes we were not successful.

Q. And then the local would provide you with a different man? A. Yes.

Q. Did you have anybody under your supervision as a fly man?

Mr. Pollack: Objection.

Judge Sherman: I think you are asking the question in conclusionary terms, Mr. Arnold.

Q. Did anybody assist you in your capacity as a fly man? A. Yes.

Q. Was this a standard normal procedure that you had an assistant or assistants? A. It was standard.

[214] Q. How many assistants did you have? A. Between two and three.

Q. And were these men selected from the number on the yellow card, the local people in each city? A. I have no idea. The local people determines that.

Q. And were these men selected from the number on the yellow card, the local people in each city? A. I have no idea. The local people determines that.

Q. Well, you heard testimony yesterday with respect to a yellow card. A. Right.

Q. Were the people that assisted you, the three or four people, were they in the carpentry department? A. Yes, they were part of the department.

Q. It would be safe to assume that if three local men were added to the carpentry department in a given city, they would be your assistants? A. Not really, they weren't all my assistants.

If there were three added, one would serve my father on the deck and I would have two on the fly floor.

If there were four added, I would have three on the fly floor and one would be helping my father on the deck.

Q. Did the requirements say at least three? A. Yes.

Q. And the show was presented with two others and yourself on the fly floor? [215] A. Yes.

Q. What were the circumstances that required three on the fly floor? A. At each house we had to clear bags off the fly floor so we could get our pieces in and out.

We also had to use two men sometimes because of pieces and weight.

Q. How many carpenters on the main deck? A. My father and one assistant.

Q. That is what the show required, that is how it was constituted? A. It didn't really require—yes, it did require that many people.

Q. Did you ever have any men working on the fly floor that were unsatisfactory? A. I had a few.

Q. What happened to those people? Did they continue to work or were they replaced? A. Some did, some didn't.

Q. They were replaced? A. It depended upon local conditions.

Q. If you felt a man had to be replaced, what would you do? A. First I would talk to my father and the house fly man. [216] Each house you go to has one fly man with it. We would explain the situation as to why we thought he was unsatisfactory.

If the house fly man couldn't do anything to bear on the matter, we would take it to the house carpenter and the stage manager would come in and we would talk.

Then depending on how the union was set up, depending on how much political power the guy may have had, we usually, by talking to the union and by management, could get an agreement worked out.

Q. You would get an agreement worked out to get somebody else? A. Like the local union would have to fire the man or tell him he wasn't required any more.

Q. Did you ever have a situation where you couldn't get rid of a man? A. I had a situation where somebody was unsatisfactory but we couldn't get rid of him but I changed the situation so after that he became satisfactory.

Q. You had the power, if you didn't like the way the man worked, you could request that he be discharged? A. I couldn't request that he be discharged. I could bring up the problem with the local union and have them work it out.

I had no power to fire anybody.

[217] Q. Could your father fire anybody if a man was unsatisfactory?

Mr. Pollack: Objection.

A. No.

Q. Was there ever a situation where a man was unsatisfactory and your father could not get him replaced—

Mr. Pollack: Your honor, I am going to object to questions where there is no foundation that this witness would have knowledge.

Judge Sherman: If he doesn't know he can say so.

A. I don't really know.

Q. Did you ever see the show in New York? A. No.

Q. Have you worked as a fly man or assistant carpenter before this? A. Yes.

Q. What shows? A. Perly and I worked on Man of LaMancha as a carpenter.

I have also worked as electrician—

Q. I am talking about fly man—assistant carpenter is another name for fly man, isn't it? A. No.

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[224] EDWARD H. DAVIS, * * *

[225] Direct Examination

Q. (By Mr. Arnold) Can you tell us what your function is, Mr. Davis? With respect to The Grease Company. A. I am general manager of The Grease Company.

Q. And as general manager you operate under the corporate name of Theatre Now, Inc.? A. That is not quite correct.

I am partners in a company called Theatre Now and one of the things we do is to manage shows.

I don't know if that answers your question.

Q. And one of the shows that you manage is The Grease Company? A. Right.

Q. And the responsibilities for managing Grease Company— A. Are all mine.

Q. Yours, personally? A. Yes.

Q. The Grease Company pays for these services? A. Yes.

Q. And it pays Theatre Now, Inc.? A. Yes.

Q. And the responsibilities are personal and to you? A. Yes.

Mr. Pollack: Your Honor, I don't mean to [226] interrupt but just to clarify something, Theatre Now is a corporation and I thought there was testimony that there was a partner.

May we clear it up now?

Q. Are you a stockholder in Theater Now? A. Yes.

Q. Theatre Now, Inc. is a New York corporation? A. Yes.

* * *

Q. Mr. Davis, I am going to ask you one question and after we get the answer to that we'll backtrack.

Do you know when the decision to fire Mr. Joseph Doucette, Sr. as carpenter of the road show Grease was made? A. Yes.

Q. Can you tell us what date that decision was made? A. It was made Thursday night of the third week in Toronto. It's the Thursday before Good Friday.

Judge Sherman: Good Friday is marked in red on that calendar.

Also, there is a table on the back of the calendar [227] indicating when Good Friday was.

Q. Good Friday was April 20, 1972. A. Then it was April 19th.

Judge Sherman: 1972?

Mr. Arnold: '72.

Q. Who was the decision made by? A. By Miss Fox and her partner, Mr. Waissman.

Q. Were you informed of that on April 19th? A. Yes.

Q. Can you tell us when Mr. Doucette was hired by Grease Company? A. The middle of December, December 13th. I think that was the date on the contract.

Q. By whom was he hired? A. Myself.

Q. You had the authority to hire him? A. Yes.

Q. Where did this hiring take place? A. In my office.

Q. Was anybody else present? A. On the premises, yes, not specifically in the office at that time.

Q. You and Joe Doucette, Sr.? A. Yes.

Q. Joe Doucette, Jr. was not there? [228] A. No.

Q. Had you had any meetings with Mr. Doucette prior to the contract was executed? A. Yes.

Q. How many meetings did you have? A. I can't be sure. At least one, perhaps two, but definitely one.

Q. Tell us the substance of the conversations between yourself and Mr. Doucette on the first meeting that you had with him. A. Mr. Doucette had called me and asked me about the show.

When I heard the name Doucette I was taken aback because there are many Doucettes and—

Q. No, no, no.

Just tell us what you said and what he said. A. I said I really hadn't thought about hiring him. He was in town with a show called Pearly and it had one week to go and it was closing.

He knew we were looking for a carpenter and I offered my services.

I said no, I would rather not hire him and he said, I am not the Doucette you are thinking of.

At this point we were going into the shop very soon, I had been unsuccessful in finding another [229] carpenter and I decided to ask him to come up and meet him to find out if what he said was true.

Q. Did he subsequently come to your office? A. Yes.

Q. Did you discuss with him the requirements of the show? A. Yes.

Q. Tell us what you said and what he said? A. I told him the main thing I was concerned with—one of the main things I was concerned about was getting the show in as quickly as possible.

From the very beginning we had an eye toward getting it in in eight hours.

When I negotiated with the various theaters we figured out getting the show in in eight hours which would keep our costs down.

We figured, having—after having certain changes that it would be hung in eight hours and the shop assured me that if I had good people the—it could be done in eight hours.

Mr. Doucette said he hadn't seen the show, he hadn't seen the set, but he understood what I was asking him.

He had given a reference—the general manager of Perly, he gave as a reference.

[230] Q. Did you ask him to see the show or look at the plans? A. I don't recall if at that point I asked him to look at the show or see the plans.

Q. Did you talk to him about salary? A. I believe I did, yes.

Q. And was there any discussion about a raise? A. Not at that point. I told him how much money I was offering and he said that wasn't what he was used to getting and then we stopped discussing salaries at that point.

Q. Did you ever again discuss salaries or raises with him? A. We discussed it a later time, perhaps the day we signed the contract where he made the arrangement that he would accept the lesser salary with the understanding that in six weeks he could get a raise if everything was satisfactory.

Q. Now, tell us what happened. Tell us what happened the day the contract was signed. A. I'm sorry, I didn't get the question.

Q. Was anything else discussed?

You told us about conversations you had on days prior to the day the contract was signed and now you said on the day the contract was signed there was a discussion [231] of a raise in six weeks.

Was anything else discussed at that meeting?

Let me ask you this:

Was there ever any discussion about an assistant for Mr. Doucette? A. Well, there always is a discussion about the rest of the crew.

Q. When did this discussion take place? A. I imagine it was on the first meeting the question I ask is, can you get an assistant or do you want me to find one, and he said he would like his son to be his assistant and I think I asked him, has he worked before and he said, yes, as my assistant on Perly and I said, that was acceptable since he was the one who had to work with him and the fly man is responsible to him.

Q. Did you discuss salary for the assistant? A. I believe I did.

Q. And the salary you offered him was acceptable for his assistant? A. I told him my philosophy, that the three heads should get the same salaries and the three assistants should get the same salaries because it has been my experience that people talk about salaries and if they are hired at different rates it causes dissention.

He felt his son should get more.

[232] I said at this point I have already made deals with the other men and I cannot turn around and give your son more money than they.

And he accepted that and we let it go at that time.

Q. Was anything else discussed on the day the contract was signed that you think is important to this case? A. Only that Mr. Doucette said to me, to allay my fears about a reputation, he said, you will find that I am not what you think I am, that I am the good Doucette, and I said I was delighted to hear that.

Q. Was there any conversation with respect to the quality of work you expected and the time that you required to hang the show? A. No, I don't think I ever said anything about the quality of work.

Q. Now, Mr. Davis, at the time the contracts were signed, who filled in the blanks on the top of the contract? A. Mr. Doucette filled in his own.

I assumed his son filled in the other one.

Generally what happens, the stage hand must go up to the IA after the bond is posted and they are the ones that can get these contracts.

They fill them in before coming to see me and then I signed in the lower left-hand portion.

[233] Q. Were these contracts filled in—take a look at Exhibits 2 and 3.

Is that your signature on the lower left-hand corner of these contracts? A. Yes.

Q. I call your attention to the top half of these contracts and let's look first at the carpenter contract. Were all of the notations that appear there on the contract when you signed it?

Refer only to the front now, Eddie. A. Yes.

I couldn't swear to it but I believe they were.

I filled in the salary in my own handwriting which is the figure here and I signed the lower left and Mr. Doucette filled in the rest.

Q. The only writings then on both of those contracts that are in your handwriting are the salaries and the signature in the lower left-hand corner? A. Correct.

I believe this handwriting on Mr. Doucette Jr.'s handwriting doesn't look like mine.

Q. What about Senior's? A. Senior's, yes.

Q. And on whose behalf did you sign that? A. It says party of the first part here.

[234] It says The Grease Company.

For permanent address it says 1564 Broadway, which is the permanent address of The Grease Company.

Q. What is the address of Theatre Now? A. 1501 Broadway.

Q. And did it maintain that address at that time, The Grease Company I am talking about, 1564 Broadway? A. Yes.

Q. How do you explain the words Theatre Now on the third line of the fly man contract? A. That got by me.

I just didn't notice it. I am usually very careful to make those changes because at the end of the show we when people apply for unemployment, they make the claim against Theatre Now and then we get the charges against Theatre Now and we have to write back and say no, the rightful company is The Grease Company, not Theatre Now.

Q. In your capacity as general manager for the Grease

Company, do you sign contracts with respect to their productions of this play? A. I sign certain contracts, yes.

Q. Those contracts that you sign, in what capacity do you sign them? A. As general manager.

[235] Q. Have you ever, as general manager, executed a contract on behalf of Theatre Now for The Grease Company? A. No.

Q. Can you tell us when the next time you had anything to do with Joseph Doucette, Sr. and the national company of Grease? A. I have to say it was probably in Boston sometime in the hanging of the show and the opening night performance.

Q. Where were you? A. I must have been at the theatre.

Q. Were you in Boston? A. I came to Boston, yes.

Q. What date did you say that was? A. Well, we opened on the 23rd of December which was a Saturday night so it had to be Thursday or Friday of that week.

Q. What are you referring to? A. There is a calendar here, it says 1972 on it.

Q. I didn't see what you were referring to.

You were in Boston for what purpose? A. To observe and supervise the inauguration of the national company of Grease.

Q. Who else was there from management? A. Mr. Waissman, Miss Fox, Tommy Smith, myself and [236] the entire production and crew.

Q. From management it was yourself, Waissman and Fox and Tommy Smith? A. Yes.

Judge Sherman: Who is Tommy Smith?

The Witness: Production stage manager of the New York company and production supervisor of any subsequent performance.

Q. Will you explain the differences between a production man and your function? A. My function concerns itself with all the business elements of the production, the front of the house is what we call it.

The production supervisors concern themselves with all the artistic and physical parts of the show, behind the footlights.

Q. Mr. Smith is the production supervisor? A. Right.

Q. Concerned with the physical and artistic elements? A. Right.

Q. As opposed to the business elements which would be your part? A. Yes.

Judge Sherman: Would that include the orchestra?

The Witness: If they play bad it's his problem. [237] If they want too much money it's my problem.

Q. You are concerned with the elements such as money and Tommy is concerned with the elements of scenery in the right places or the orchestra? A. Right.

Q. Tell us what happened in Boston on the opening night in Boston? A. I had no words with Mr. Doucette in Boston. I personally had no words with him.

Q. Was there any incident or any occurrence which you feel was important or germane to this issue or which led up to the ultimate decision which you stated that on April 19th the decision was made that he be terminated? A. No.

Q. When was the first time in your recollection and in our knowledge that something occurred which was part of the basis for the April 19th determination? A. I would say the first one was in March, sometime during the engagement in Washington.

I don't know any dates, it would have to have been after Miss Fox and Mr. Waissman had seen the show down there and came back and reported to me that certain changes had

been made, certain things happened that they didn't approve of.

Q. Now, you are saying sometime in March— [238] A. In Washington. I don't know the month. Sometime during the run in Washington—I was there for the opening night.

I spoke to Mr. Doucette as he testified. I came away from there with nothing to be concerned about.

Q. What were the dates of the Washington, D. C. run? A. You would have to check that.

Q. Nobody knows if it is completely accurate, Eddie. A. It is.

Yes, it was March. That's when I was down in Washington, I spoke to Mr. Doucette before the show, we walked around on stage.

As he testified, we did have discussions. The show went off well and I went back to New York.

When I went—when I go to the opening of a show, I don't sit and watch the performance, I take care of a lot of things.

So, aside from talking to the crew prior to the curtain going up, I don't concern myself with anything backstage unless it is brought to my attention.

Q. What was the first time that you heard of anything with respect to the Washington production being to anybody's unhappiness? A. It was the day after Miss Fox and Mr. Waissman came back from Washington.

[239] I don't know the date.

Q. But it was sometime between March 5th— A. And March 24th.

Q. Do you have a diary with you which might refresh your recollection on that? A. No, I don't keep their appointments.

Q. Tell us what it was that came to your attention and by whom and how? A. Miss Fox called me up and—

Q. From where to where? A. I am not sure whether this was a telephone conversation or a personal conversation.

We meet very often. We talk about the show a great deal and I couldn't be specific on this instance when this discussion took place.

However, the discussion was that certain artistic changes had been made without checking with her or Tommy Smith and they took great exception to it.

Certain pieces did not move—fly in and out as they previously had.

Certain masking and backing had not been there as it previously was in Boston.

I think those were the major complaints.

> Judge Sherman: Will you explain what masking and backing are?
>
> [240] The Witness: When you sit in front and you can see the stagehands working, the masking prevents you from doing that.
>
> So you can't see the off-stage areas.
>
> Judge Sherman: And the complaint was that the scenery was so altered that you could see the stagehands?
>
> The Witness: That the masking was not hung as it had been in Boston so you could see backstage from the audience.

Q. You used the words artistic decisions.

Did you mean artistic decisions with respect to the physical production? A. Yes.

Q. Is it possible that it was Mr. Waissman who spoke to you after the Washington run and not Miss Fox? A. It is possible.

They are generally of one mind when it comes to something like that and it may have been either one of them.

Q. Did you take some kind of action?

Was something done after this conversation? A. No.

I felt since it was an area that involved backstage and it was turned over to Tommy Smith, at that point we were switching stage managers, one who had been with [241] us who had given us notice and who was leaving the show and another one who had just joined, he was down in Washington.

He had seen the show in New York. He noticed certain differences in what he saw in Washington and what he saw in New York and he was trying to find out why the physical differences existed.

Q. Who was the new stage manager? A. Frank Marino.

Q. Did Frank Marino ever tell you that he had determined why or what the differences were? A. No, he wouldn't come to me on that.

Q. Did you ever learn what the differences were? A. Yes.

As I have just said, that some of the backings were not as they had been or should have been.

Q. Did you ever learn why they were not that way? A. It was said that—

Q. By whom? A. Either Miss Fox or Mr. Waissman said that Frank Marino said that Joe Doucette made—that certain changes had been made.

That is why I hesitated, because this wasn't directly to me.

Q. That those changes had been made— [242] A. In Boston and they were continuing.

He wasn't aware of them, his only point of reference having been New York, not having been in Boston prior to that.

Q. Was any direction given to undo the changes? A. Whether it was done in Washington or not, I don't know.

You just don't do those—those things always cost money.

The feeling was that it could be done the next time we—when we had to move.

Q. Did anything else occur in Washington that you know of? A. No.

Q. Where did the show move to from Washington? A. To Cleveland.

Q. Did anything occur in Cleveland with respect to the physical production? A. That was a one-week stand.

I don't really believe so. Nothing comes to mind.

Q. Where did the show go to from Cleveland? A. Toronto.

Q. For what period? A. Three weeks, April 2nd through April 21st.

[243] Q. Did anything happen in Toronto? A. Yes.

Again, going back to April 19th, the Thursday before Good Friday, I got a phone call at home that night after the performance, Miss Fox and Tommy Smith and Pat Birch who was the choreographer had gone to Toronto—

Q. Who went there? A. Miss Fox, Mr. Smith and Pat Birch, who was one of the choreographers—one of the creators of the show. They went to Toronto to look at the show because we were going to Detroit for a five-week stand.

Q. When did they go up? A. Wednesday, the 18th, I believe.

Q. For what purpose? A. To check the show prior to its opening in Detroit which was a five-week stand and a very important stand because we could make a lot of money if the show looked good.

We could lose a lot of money if the show didn't look good.

Q. You got a telephone call on the 19th at about what time? A. About 11:00.

Q. At night? [244] A. Yes.

Q. Tell us the substance—who did you speak to on that conversation? A. I spoke to Miss Fox primarily.

Q. What did Miss Fox say to you? A. Well, she was appalled at—

Q. Let's not characterize— A. All right.

She said that the show was in terrible physical condition.

She couldn't believe that it could look so shoddy, that the pieces were coming in at all angles.

She just felt that the whole show had been terribly neglected.

I don't know if I can sav anything more. That the show was just in terrible shape and she couldn't understand how it had gotten that way and if it had opened in Detroit in that condition, she was sure that the reviews were such that it would be devastating.

She was going to give orders to have immediate work done, physically, to take care of the set and to give notes to everybody to get the show back to the quality that she insisted on.

Q. Did she indicate that she knew or wanted to know why the show looked that way? [245] A. Well, she wanted to know but she said Joe Doucette was not there, that he had gone ahead to Detroit to spot lines and did I know when he was coming back.

I said it was a six or eight hour call to spot lines and he would probably be back in the morning.

The next day was Good Friday and that was the only time we could have a call because Saturday we were moving and Monday we were going into Detroit.

We decided that even though it would be holiday rates, there had to be a work haul done on Friday to do whatever had to be done.

Q. Did you speak to anybody else in Toronto in those two or three days? A. Yes, I spoke to Don Antonelli, the company manager, and Frank Marino.

Q. With respect to this problem that Miss Fox had called to your attention? A. To Antonelli, just acknowledging that whatever work had to be done should be done and authorizing him to see that it got done.

And Mr. Marino too voiced to me a conflict between himself and Mr. Doucette and felt he was having difficulty doing what he felt needed to be done and had felt that he was fighting Mr. Doucette all the time.

[246] Q. In what respect, what kind of matters? A. On getting anything done that he felt had to be done.

Q. Frank Marino was the production stage manager? A. Correct.

At this point he had assumed the job.

Q. He was in charge of all matters in front of stageback? A. That's right.

Q. And what kind of problem did he indicate with Mr. Doucette? A. That it was a constant fight with Mr. Doucette, to have accomplished whatever he may want accomplished backstage.

Q. When is the next—did anything else occur during the Toronto engagement? A. No.

Q. Did you have any subsequent conversations with Mr. Waissman, Miss Fox or Tommy Smith with respect to the appearance of the show and what had to be done? A. No, because at that point it went to Tommy and not to me.

Q. You started your testimony off by saying that on April 19th, and I want you to check your calendar on that date, because you may be mistaken, that on April 19th [247] it was determined that Mr. Doucette's employment was going to be terminated.

That was the first question I asked you.

Now, is that correct? A. Yes, that is correct.

Your question didn't seem to be asking that. You said did anything else happen and nothing else happened.

Q. Tell us what made you say—first, let's try to verify the date.

Look back on your calendar, Good Friday was the 20th of

April. A. I knew it was at the end of the week prior to going to Detroit.

I know the work haul was on Friday because it was an overtime day.

I can only assume that it was the day before. If it was two days before, it might have been. It had to be right there. I would not have it in my calendar because I was at home.

Q. Tell us what happened because you are now able to state that it was determined— A. Miss Fox said to me—

Q. Describe when she said it— A. On the telephone—

Q. Was this the first telephone call?

[248] Did you have more than one telephone call? A. I am not sure. I was on the telephone quite a bit that night from Miss Fox to Mr. Antonelli.

I don't recall whether it was one continuous call or more than one call.

When she was telling me how upset she was about the look of the show and how concerned she was about the relationship between the stage manager and the carpenter, she said, this man must go, referring to Mr. Doucette.

Q. Her words were, this man must go? A. Yes.

Q. What else did she say and what else did you say? A. Well, not being there at the time I couldn't verify how important all these problems were.

I mean, I was just listening to it on the telephone. Firing somebody is not something you do very easily and it always falls upon me to do it if it has to be done and I don't look forward to doing it.

I said to Miss Fox, Maxine, the time is not now to do anything of that sort, let's just correct the problems that exist and we can talk about it later.

Because I knew there was a certain amount of anger and excitement at the moment.

Q. Did you succeed in calming her down? [249] A. To a degree, yes.

Q. Did you speak to Ken Waissman during those two or three days? A. He was in New York for a few days and he reiterated what Miss Fox said and he knew that they had to change the carpenter.

Q. What did he say? A. I don't remember his exact words.

He said, we have to get rid of Joe Doucette or words to that effect.

Q. And what did you say? A. I said, Ken, it's not easy finding a good road carpenter.

Perhaps now that things are being talked about it can be organized better. Let's see what happens because now is the—not the time to do it. There are a number of moves coming up and who is to say that whoever you get is going to do the job better than he.

I had trouble getting a carpenter at the beginning, road carpenters are at a premium and he said, well, that could very well be but I want to get rid of him as soon as possible.

Q. And approximately when was that conversation? A. Within that week. I really couldn't tell you exactly [250] the day.

Those things are constantly discussed day after day after day.

They don't go away, unfortunately.

Q. Did any other incidents occur with respect to Mr. Doucette's performance of his duties? A. Only as ties in the following week with the sound problem that happened in Detroit which you are about to go into.

Q. The show then moved from Toronto to Detroit? A. Yes.

Q. Miss Fox and Mr. Waissman told you they wanted Mr. Doucette terminated and you told them to wait until the opportune time.

What would be the opportune time? A. The opportune time on this tour would always be after the Los Angeles engagement.

They were sitting down for a period of thirteen weeks there and during that time any new carpenter would be able to prepare himself for subsequent moves.

I always hoped that even though firing is threatened and demanded at a point, I always hope that people can—being cool and rational will settle the problems.

Q. Now, the show moved to Detroit on April 23rd, [251] is that correct? A. Yes.

Q. Now, was there a meeting that you recall from—in New York between yourself and someone else on April 23rd? Do you have your diary with you?

Judge Sherman: Mr. Davis, will you please show that to Mr. Pollack before returning to the stand?

Mr. Pollack: Just show me what you will be looking at so I won't have to get up again.

The Witness: April 23rd.

Judge Sherman: Let the record show that the witness has in his hand a document which appears to be a diary—a daily diary.

Do you have any objection to him using it, Mr. Pollack, to refresh his recollection?

Mr. Pollack: No objection at all.

Q. Is this diary kept on your desk at all times? A. Yes, except for today.

Q. And what does this diary cover? A. The year 1973.

Q. It is the current diary that you use on your desk now for your appointments? A. Yes.

Q. I ask you to look at April 23, 1973 and tell me [253] if it refreshes your recollection. A. It says 3:00 W & F, which refers to Waissman and Fox.

Q. Do you recall that meeting? A. Yes.

Q. Who was present at that meeting? A. Mr. Waissman, Miss Fox, myself and I believe Tommy Smith was there too.

Q. Where was that? A. At their office, 1564 Broadway.

Q. Do you recall the subject matter of that meeting? A. It was a rehash of what happened in Toronto.

Q. A rehash; Miss Fox was telling you what she had seen? A. Yes, she was in more detail going over the three or four days that she, Pat Birch and Tommy Smith spent in Toronto.

Once again, they talked about the physical production, how it looked and the changes they wanted to make.

Q. What changes did they want to make? A. They wanted to get rid of Mr. Doucette.

Q. Did they give you any specific instructions or orders on that date? A. They said, yes, you are to fire him.

I prevailed upon them to let me be the one to make the decision as to when.

[254] Q. So the actual order to you to fire him was on April 23, 1973? A. Yes.

Q. And that order was given to you by whom? A. Both Mr. Waissman and Miss Fox.

Q. In the presence of Tommy Smith? A. Correct.

Q. And the reasons given for their adamancy in terminating him were? A. Their discontent with respect to the physical look of the show.

Q. Was anything said of the fact that he wasn't there when they needed him? A. Yes.

They couldn't understand why, if he went to Detroit for a six or eight-hour call to spot lines that he was gone for so many days.

Q. How many days was he gone? A. I do not know. Three or four, I believe, is the—is what they said.

Q. The show moved to Cincinnati.

Did anything happen in Cincinnati with respect to Mr. Doucette? A. Not during the time I was there.

I was there Monday during the tie-in.

[255] Q. Let me stop you there.

Look at your diary for May 21st. A. Yes.

Q. Where were you? A. I must have been in New York because it doesn't say that I was with anyone else.

I had lunch with Mel Nugent in New York that day.

Q. Did you meet with Walter Deal that day? A. No.

Q. When did you meet with Walter Deal? A. The Thursday of that week.

Q. May 31st? A. May 31st.

It says 11:30, Deal's office.

Q. Do you want to show that page to Mr. Pollack?

The Witness: Yes. It says 11:30 Deal's office.

Q. Is it a fact that you were in Walter Deal's office on a totally unrelated matter? A. That's correct.

Q. With nothing relating to the Grease Company? A. That's right.

Q. Is it a fact that something happened while you were there with relation to the Grease Company while you were there? A. I was there with Billy Cohen, my partner, and Irving [256] Cheskin, president of the League of New York Theatres, to discuss another matter, and as we got into Mr. Deal's office, he had hung up the phone and he was very hot under the collar and apparently he had been speaking to the business agent in Cincinnati and it was concerning the firing of Bob Weeden, and at the same time apparently he had discussed this yellow card business with Mr. Doucette.

Q. Did you overhear any part of Mr. Deal's end of the conversation? A. No.

Q. When you walked in— A. He had just hung up the phone when we walked in.

Q. Tell us what Mr. Deal said to you. A. His exact words were, I don't know what is the matter with you guys, why do you hire a * * * like that.

Q. Did you know who he was referring to? A. Yes, I did.

Q. How did you know that? A. I believe the reason we couldn't go into the office was, Irving said, he is on the phone with your carpenter in Cincinnati.

Q. Where was Mr. Deal? A. In the conference room. He had been preparing to [257] meet with us when he took this call.

Q. Mr. Cheskin then said to you— A. Mr. Cheskin had been informed that he was on the phone with my carpenter in Cincinnati.

We waited in the hall. The door was closed. Mr. Deal finished his telephone conversation. We walked in. He was putting down the phone—

Q. Those were the first words out of his mouth? A. Yes.

Q. Did you say anything? A. I was a little taken back because I don't think that word applies to Mr. Doucette.

A. * * * seems to characterize visciousness and that didn't seem to apply to Mr. Doucette in my opinion.

He didn't go any further into that.

The discussion then turned to the fact that the union had just gotten the vacation pay in their agreement with the League of New York Theatres.

The union raised as our firing of Mr. Weeden, the possibility of our trying to get away with vacation pay.

To prove that that was not the reason Mr. Weeden was dismissed, I said, we'll pay him the vacation pay. That is not the reason Mr. Weeden is being fired.

Q. Why was Mr. Weeden being fired? A. Incompetence.

[258] Q. In the performance of his duties? A. Right.

Q. Was any mention made at that meeting about a yellow card? A. He alluded to the fact—

Q. Don't say that he alluded.

What did he say? A. He just said he left himself off the yellow card, referring to Mr. Doucette.

Q. When did he say that— A. He said I don't know why you guys hire a * * * like that.

Then Irving made a remark like, you see what our problems are. He said, we have to deal with them all the time.

And he said, I have to deal with them also, and somewhere in the conversation he mentioned that Mr. Doucette left his name off the yellow card and then the subject changed to the matter for which this meeting was scheduled for.

Q. When was the first time you ever saw a yellow card? A. I have seen them before.

This is the first time I have seen this yellow card. That was yesterday.

[259] Q. Is it normally the function of a general manager to see a yellow card? A. It is not necessary. It is not necessary to see the physical entity.

Q. Did you subsequently have any discussion with anybody with respect to the yellow card? A. Not really.

We had discussed it later on, months and months later after all this was taken up but not as any great issue.

Judge Sherman: Mr. Arnold, would this be a convenient time for a short break?

Mr. Arnold: Yes, it would.

Judge Sherman: I would like to advise you that in my opinion the testimony which this witness has given may have created a *prima facie* case in favor of a joint employer relationship between Theatre Now and Grease and you are on notice thereof.

We will take a break until twenty-five minutes to twelve.

(Short recess taken.)

Judge Sherman: Back on the record.

Q. (By Mr. Arnold) Mr. Davis, then as of April 23, 1973 you were ordered by Mr. Waissman and Miss Fox to [260] terminate Joe Doucette? A. Yes.

Q. Were you given an amount of time in which to terminate him? A. Well, Mr. Waissman wanted it done immediately and I felt that that wasn't the way to do it.

I prevailed upon them to select the time.

Q. Did you have any conversations on the telephone with Mr. Doucette either before or after he was terminated? A. I had a conversation with him in Cincinnati. I called him.

I had learned that a meeting had taken place in the Theatre—I was there on Monday during the tie-in, in Cincinnati. That was Monday, the 28th of May. I was there.

We talked about the show. Mr. Weeden had already been given his notice the weekend before. I saw Mr. Weeden. He and I did not speak and Mr. Doucette and I did not speak about Mr. Weeden. We were talking about the show.

I went back to New York after the opening.

The next day I learned that—in a telephone conversation with Mr. Antonelli that a meeting had taken place at the theatre with Mr. Vignale and Bob Weeden and Joe Doucette, Mr. Marino and Mr. Antonelli about the [261] firing of Mr. Weeden and I asked how come Mr. Doucette was present at that meeting and Mr. Antontelli said he was present, he didn't know how come.

So, I decided to call Mr. Doucette and I did and I said, Joe, why are you getting involved in this, and he said to me, I only advised the man of his rights.

And I thought about that and it registered and I said okay, you advised the man of his rights. Now let's let them take care of it and that was the end of that conversation.

Q. When was the next time you had a conversation with

Mr. Doucette? A. It was the day after he had gotten his notice so it was Monday, June 18th.

Q. Who instituted that telephone call? A. Mr. Doucette called me.

Q. From California to New York? A. Yes.

Q. What did Mr. Doucette say to you and what did you say to him on the 18th? A. He said I don't understand how come I have been given my notice.

I said, Joe, the producers have not been happy for a long time and we gave you your notice.

Q. Did he say anything? [262] A. He kept asking why and saying that this was unexpected and I don't understand, and I really didn't want to go into it.

After letting somebody go and you have to hash it and rehash it, I didn't want to do that.

What happens in situations like that, people generally say I'm terribly sorry and all that kind of stuff—

Mr. Pollack: Your Honor, I ask that this be stricken.

The Witness: Well—

Judge Sherman: Well—

A. So, I tried to keep the conversation as brief as possible because the axe had already been taken and there was really nothing to discuss.

Q. Did you subsequently have a further conversation with him? A. I don't believe so.

Q. Tell me how the physical act of termination was accomplished by the chain of command. A. I called Walter Deal on Friday, the 5th of June—the 15th of June. I called Mr. Deal and I said, Walter, I want you to know that I am going to be giving the Doucettes their notice on Sunday night, and he said to me, that is your prerogative.

That was the end of the conversation.

[263] I instructed Mr. Antonelli to inform Mr. Doucette on Sunday night—

Q. When did you instruct Mr. Antonelli? A. Mr. Antonelli had known about this for some time but I don't know exactly when.

Q. Did he know what the date of termination would be? A. Yes.

Q. It had been determined long before that, that the 17th would be the termination date? A. Yes.

Q. And he learned that from you? A. That's correct.

Q. Do you have any idea approximately when you told him that? A. No.

This had been planned for some time and the management people knew that this decision had been made.

Q. And Mr. Antonelli then executed your orders and terminated Mr. Doucette? A. That's right.

Q. Mr. Davis, was Mr. Doucette terminated because of his union activities or his intercession in any way on behalf of Bob Weeden in Cincinnati? A. No.

Q. Did it have anything to do with management's [264] decision to terminate him? A. No.

Q. Management's decision had been made a long time before? A. Yes.

Q. Why did management retain him after April 23rd? A. Because it was my judgment that it would be difficult to replace him because of the nature of this show and the moves involved and I did not have a suitable substitute.

Mr. Arnold: No further questions.

Judge Sherman: Mr. Davis, I believe the contracts that you have with the Doucettes require you to give the employee either two weeks' pay or two weeks' notice.

The Witness: That is correct.

Judge Sherman: Which did you do?

The Witness: We paid them two weeks' pay and gave them two weeks' notice because we felt it would be better to have them off the premises.

Q. (By Mr. Arnold) Did you give them their transportation back? A. Yes.

Mr. Arnold: That's all.

CROSS EXAMINATION

Q. (By Mr. Pollack) Do you have a corporate position with Theatre Now? [265] A. That's correct.

Q. You are a vice president? A. Yes.

Q. What are your duties as vice president of Theatre Now? A. I sit on the Board.

As vice president I have very few duties.

Q. The agreement between Grease Company and Theatre Now requires Theatre Now to hire employees for Grease Company; is that correct?

Mr. Arnold: Objection.

There has been no testimony of a contract between Grease Company and Theatre Now.

Judge Sherman: If there isn't one—

Mr. Pollack: I thought that was said on direct.

A. If I can make a clarification for you, Mr. Waissman and Miss Fox didn't come to Theatre Now to get a service.

They came to me, Eddie Davis, to be their personal manager.

I am in a company that engages in various theatrical endeavors.

I am on a yearly salary from Theatre Now.

Therefore, when I accept an assignment to act as a general

manager for any producer, my salary is paid to Theatre Now, that is the way it is structured, if that [266] will help you.

Q. In your capacity with the Grease Company, you have the authority to hire and fire employees for the benefit of the Grease Company; is that correct?

You would hire employees who would be on the payroll of Grease Company? A. I don't have sole authority to hire or fire anybody.

Q. Mr. Davis, you just said you didn't have sole authority to hire employees for Grease Company? A. That's right.

Q. When you hired Mr. Doucette, did you have authority at that time or did you have to check— A. I always discuss hirings with the producers of the show.

Q. Miss Fox and Mr. Waissman? A. That's correct.

Q. And you did that with respect to the hiring of Mr. Doucette? A. That's correct.

Q. Mr. Davis, do you know a gentleman by the name of Bill Lettich? A. Yes.

Q. And at the time you hired Mr. Doucette, was Mr. Lettich a stage manager for the national tour company? A. Yes, they were in rehearsal.

[267] Mr. Arnold: National Touring Company of what?

Mr. Pollack: Grease.

Q. Didn't Mr. Lettich recommend to you that Joseph Doucette, Jr. be hired as a flyman. A. I don't recall that now.

I don't recall discussing it with Mr. Lettich.

Q. Could you have discussed it with Mr. Lettich? A. It's possible but I don't recall discussing any instance of hiring the crew with the stage manager unless I have some knowledge that for some reason I had better check with him.

I don't recall discussing any of the stage hands with Mr. Lettich.

Q. Well, stage hands would be under the general supervision and responsibility of the stage manager, wouldn't they? A. Partly.

Q. Because he is responsible for what happens from the stage on back, isn't he? A. Partly, yes.

Q. Isn't it a fact, Mr. Davis, that the decision to discharge Mr. Doucette and his son was made by you? A. No.

Q. Isn't it a fact that the decision to discharge Mr. Doucette was made in May or even later than that? [268] A. No.

(Document was marked General Counsel 4 for identification.)

Q. Mr. Davis, during the investigation of this case did you give an affidavit to an agent of the National Labor Relations Board? A. I did.

Q. I show you what has been marked General Counsel's Exhibit 4 for identification, and I ask you whether General Counsel's Exhibit 4 is the affidavit that you gave. A. Yes, it is.

Q. Does the affidavit bear your signature? A. It does.

Q. General Counsel's Exhibit 4 bears the date of July 12, 1973.

Mr. Davis, did you sign it on or about that date? A. If that is the date it has on it, yes.

Q. Mr. Davis, I would like to direct your attention to the fifth page of General Counsel's Exhibit 4 and ask you to please read it to yourself. A. Yes.

Q. I ask you now, Mr. Davis, whether the affidavit has refreshed your memory. A. About what?

Q. Now, I ask you, isn't it a fact that the decision [269] to terminate Mr. Doucette and Mr. Doucette, Jr. was made by yourself. A. No, it wasn't.

Q. Was the decision to terminate Mr. Doucette made in May? A. Yes.

It was made during the Detroit engagement which it says here.

Q. And when was the Detroit engagement? A. April 23rd to May 26th.

Q. So the decision to terminate him was not made on April 23rd? A. I didn't have a schedule which this was taken and the gentleman that wrote the—that is why it was put down there for clarification, in Detroit, Michigan.

That is why "in Detroit" was stated there.

Say it turned out to read that way.

Q. Did you make the statement to the Board agent that "I made the decision to discharge Joseph F. Doucette, Jr. and Joseph F. Doucette"? A. I must have made it at that time, yes.

Q. And was it true that time? A. No, because I cannot make that decision myself. What this should have read was "The decision was made," as written there that "I made the decision."

[270] You must understand that in Toronto, the week before this, Mr. Waissman and Miss Fox decided to fire Mr. Doucette and I prevailed upon them to wait so we could discuss it further.

So, I made my own decision at that point in Detroit that their wishes were going to prevail.

Q. At the time you gave this statement was Mr. Arnold present? A. Yes.

Q. Did you and Mr. Arnold both read this statement before you signed it? A. Yes.

* * *

[271] Q. Mr. Davis, I show you what has been marked as General Counsel's Exhibit 5 for identification.

Please identify that exhibit for us. A. It appears to be a schedule of the national company of Grease commencing with

its first performance in Boston through its opening in Los Angeles.

Q. Is General Counsel's Exhibit 5 the schedule you have been referring to to refresh your recollection as to cities and dates? A. Yes.

Q. There is a change on the schedule toward the bottom where San Francisco is crossed out and the dates are changed to reflect a show in Los Angeles.

To the best of your knowledge are those dates accurate? A. They are.

* * *

[272] Q. Mr. Davis, around April 19th, or maybe even earlier, while the show was in Toronto, did you have a conversation with Mr. Doucette in which he asked you whether some of the scenery should be painted in Toronto or whether the painting work should be done in Detroit? A. I don't believe so.

I didn't go to Toronto.

* * *

[273] Q. Did you tell Mr. Doucette to wait until he got to Detroit before touching up the scenery? A. I don't believe I did.

Q. Now, you testified that Miss Fox told you that pieces were in poor condition when the show was in Toronto, is that right? A. Yes.

Q. What pieces were they?

Were they props? A. She said the entire set.

I don't recall her enumerating the pieces to me over the phone.

She discussed what the show looked like, the general effect of the show.

Q. Did she mention that the benches were torn and taped? A. She may have.

Q. Isn't it a fact that the props are under the jurisdiction of the prop department and not the carpenter? A. That is true.

Q. After your conversation with Miss Fox in which [274] she told you the set was in poor condition, did you call Mr. Doucette to talk to him about that? A. I did not call him because Mr. Antonelli was on the premises, Mr. Smith was on the premises and Miss Fox was on the premises.

I was in New York.

Q. Well, wouldn't the poor condition of the set be the responsibility of the production stage manager and not the carpenter? A. No. It is the carpenter's job to maintain the physical production.

Obviously the two of them have to work together.

Q. Isn't it a fact that the carpenter couldn't spend money without the permission of Mr. Antonelli or the production stage manager? A. That's true.

Q. Did you talk at that time about terminating the production stage manager? A. He had just been hired.

Q. So the answer then is "no" you didn't talk about firing? A. No, not at that point.

Q. Did you, in April of 1973, give Mr. Doucette a warning that the producers of the show wanted to fire him [275] if he didn't improve the quality of his work or anything to that effect? A. I don't recall doing that.

Q. In other words, you never did that, you didn't tell him they were dissatisfied with his work? A. No.

They told him there. They were on the spot and they were telling him of their dissatisfaction.

Q. You weren't present at that time? A. I was in New York. They were in Toronto.

Q. So you don't know of your own knowledge whether he was ever told that? A. That he was in danger of being fired?

Q. Yes. A. No.

Q. And you don't know for sure that they expressed their dissatisfaction— A. They told me they did but they would never say you are going to be fired or you are about to be fired. You don't say something like that without being able to follow through.

Q. I am asking you if your knowledge comes from this or—

Mr. Arnold: I object to the phrase "personal knowledge."

[276] Q. You just said you know Miss Fox and Mr. Waissman expressed their dissatisfaction to Mr. Doucette of the set.

Do you personally know this— A. No.

Q. Does your knowledge of this come from what Miss Fox or Mr. Waissman told you? A. That is correct, sir.

Q. Thank you.

You testified that the proper time to terminate Mr. Doucette was after the Los Angeles opening of the show.

Why didn't you give him two weeks' notice prior to that or a week prior to the Los Angeles opening? A. You want an honest answer to that?

The answer is that I was afraid of sabotage.

Q. Had Mr. Doucette ever sabotage your set before? A. No.

But other stage hands had.

Nobody likes being fired. And there were two openings that had to be made.

Q. Were those important openings? A. Well, Denver was one and Los Angeles was very important.

Q. And you wanted to have a very good carpenter?

Mr. Arnold: Objection.

[277] A. I wanted the show to open.

Q. I asked you a question of whether you needed a good carpenter—

Mr. Arnold: I objected to that.
Mr. Pollack: Let's get a ruling.
Judge Sherman: Overruled.

A. I needed a man who knew the show and who could get it opened.

From Denver to Los Angeles was a long haul and anything that would slow it down would endanger the opening.

* * *

[278] Q. Isn't it a fact that Mr. Doucette could complete the job of setting up the show in a new city faster than anybody else could?

Mr. Arnold: Objection.
It calls for the—for a conclusion.
Judge Sherman: Overruled.
Answer the question.

A. Did you say this show or a show?

Q. This show. A. He should have been able to. He was more familiar with it than anybody else.

Q. That is why you didn't fire him earlier? A. Because he was the most familiar with this show, correct.

Q. Now, please direct your attention to the June 18th conversation that you testified you had with Mr. Doucette, [279] the day after he was terminated.

Did you, in that conversation, tell Mr. Doucette that you fired him because of the poor condition of the set in Toronto? A. No.

Q. Did you give him any reason why you terminated him? A. If I did, it was a phrase such as general dissatisfaction.

Q. Did you give him the reason for discharging his son? A. We didn't discuss his son—well, I don't recall discussing his son and it was for a foregone conclusion in my mind that I hired them as a team and I could not therefore move the son up to the carpenter position.

Q. Having been the fly man, wouldn't Mr. Doucette, Jr. be familiar with the show? A. He should be familiar with the show, yes.

Q. And wouldn't he be able to step in then as a carpenter if you so desired? A. No, because one of the duties of the carpenter is being able to deal with men, to strawboss the entire operation and that is something that comes with experience and a man's individual make-up.

> Judge Sherman: On how many occasions had you met Mr. Doucette, Jr. before you fired them?
>
> The Witness: I met him on each occasion when [280] I went to the cities where the show was playing.
>
> I don't think he and I ever exchanged more than hello, how are you, and that's it.

Q. I direct your attention to the May 31st meeting at Mr. Deal's office.

Did you tell Mr. Deal at that time that you were going to fire Mr. Doucette? A. I don't recall discussing that.

Q. I would like to direct your attention to a telephone conversation you testified about where you testified that you called Mr. Doucette in Cincinnati. A. Yes.

Q. Did you tell Mr. Doucette in that conversation that he shouldn't get involved in the Weeden affair? A. I said, "Joe, why are you getting involved in this?"

He said, "I advised the man of his rights. He is entitled to be advised of his rights."

Q. Did you learn of any future participation of Mr. Doucette on behalf of Mr. Weeden? A. No.

Q. Did Mr. Antonelli report to you Mr. Doucette's participation in those meetings in Cincinnati with Mr. Vignale? A. He told me Mr. Doucette was present.

Q. Did Mr. Antonelli tell you how many meetings there [281] were? A. No.

This all happened after the first meeting.

Q. Did Mr. Antonelli report to you the fact that Mr. Weeden stayed with the show until Denver? A. I told him to have Mr. Weeden stay through Denver. We had paid him the two weeks and we had nobody to replace him and I wanted him to stay until Denver so the new man could take it out of Denver and set it up in Los Angeles.

It was Mr. Marino who wanted Mr. Weeden to leave.

Q. Why didn't you keep Mr. Weeden until Los Angeles? A. I didn't want him to go into Los Angeles.

I wanted the original sound man who set this show in New York who knew the show better than anyone else to take the show out of Denver into Los Angeles and then in that way I knew I would have a good opening.

Q. Why didn't you have the original carpenter for the Los Angeles—

* * *

[282] A. The original carpenter had no experience of putting the show up and down.

The original carpenter was a local New York carpenter and had no road experience at all.

* * *

RE-DIRECT EXAMINATION

Q. (By Mr. Arnold) Do you recall the circumstances when the affidavit, General Counsel's Exhibit 4, was prepared and signed? A. Yes.

Q. Was that prepared in my office in New York City? A. That's correct.

Q. You appeared there voluntarily? A. Yes.

Q. And who wrote the affidavit? A. The gentleman from the NLRB. I don't know his name.

Q. And was this interview conducted in a rather informal question and answer manner? A. Correct.

Q. Whose words were written on the paper? A. My words were not written verbatim.

We talked and he would be writing as we were talking and that's how it was done.

Q. I call your attention to the paragraph Mr. Pollack [283] has shown you where the words "I made the decision for the discharge in mid May," appear.

Do you recall how you happened to say mid May?

Was there any frame of reference in your mind when you said mid May? A. I wanted to be sure that it was Detroit. The mid May was a recollection of when we were in Detroit. Detroit followed Toronto.

Q. You wanted it made clear that the determination to fire Mr. Doucette was made in Detroit? A. Right

Q. Throughout this schedule—when you said "my general dissatisfaction," is there any reason why you used the personal pronoun, the singular rather than the plural? A. I had a personal dissatisfaction from the very beginning.

But I overlooked it constantly because I felt that I had no way—the job was getting done and I may have been making a reference at that point to my personal dissatisfaction but not necessarily saying that was the reason he was terminated.

* * *

Judge Sherman: I believe you testified that Miss Fox telephoned you and told you that the show was in [284] poor condition.

The Witness: The physical part of the show.

Judge Sherman: When did you hire the carpenter who replaced Mr. Doucette, Sr.? I assume that was in Los Angeles?

The Witness: I had to put on a local man who had the job for a couple of weeks until another carpenter who had worked for me prior and I felt this carpenter could take out the bus and truck.

Judge Sherman: The second carpenter had road show experience?

The Witness: He worked for me for the past five years on bus and trucks which is a smaller version of the large shows.

Judge Sherman: How long did the local carpenter work for you in Los Angeles prior to the man who worked for you previously come in?

The Witness: I verbally hired the carpenter, the road show carpenter, at the time I fired Mr. Doucette.

I made arrangements for a local carpenter to fill in.

Judge Sherman: Did you know how long it would be for the new carpenter to assume his responsibilities in Los Angeles?

[285] The Witness: He told me about two or three weeks.

Judge Sherman: And that is the way it worked out?

The Witness: Yes.

Q. (By Mr. Arnold) Mr. Davis, when you said people that had worked for me, did you mean worked for you, for Theatre Now or Grease Company? A. For shows in which I was general manager.

There may have been other producing companies involved but when I say worked for me, there is a relationship between a crew and a general manager.

Q. Yourself is what you were referring to? A. Yes.

* * *

RE-CROSS EXAMINATION

Q. (By Mr. Pollack) Did you hire a replacement for Mr. Doucette while the show was in Detroit?

Mr. Arnold: I will object to the word hire.

Q. Did you make arrangements to replace Mr. Doucette with another carpenter while the show was in Detroit? A. No.

Q. Did you make arrangements to replace Mr. Doucette while the show was in Cincinnati? A. I can't be sure.

Q. Did you make arrangements to replace him while the show was in Denver? [286] A. I have a feeling that I made my telephone call while the show was in Denver, to find out the availability.

Q. Did you enter into a written contract with the other carpenter for the national road show of Grease? A. I personally did not. The thing is, when one contract is over and a new man comes on the job, it is issued by either the IA in New York or whatever he happens to be and he takes it to the management person in authority.

In this case it would have been Don Antonelli and he would have signed the interim contract and then the subsequent contract for the new man.

Q. After Mr. Antonelli signs an interim contract, does he send it to you? A. He should, yes.

Q. Do you have a copy of such contract? A. I will have to look.

* * *

[288] MAXINE FOX WAISSMAN, * * *

DIRECT EXAMINATION

Q. (By Mr. Arnold) * * *

Q. Are you one of the producers of the musical show entitled "Grease"? A. Yes, I am.

Q. Who is the other producer? A. Mr. Kenneth Waissman.

Q. Will you tell the court what the functions of the producer are? A. The producer oversees and supervises the entire production and every aspect of it and chooses the creative staff, selects the property and generally is responsible for the over-all organization.

The producer is also the general partner of the company formed to produce the show and is responsible to the investors of the show.

[289] Q. Would it be a fair statement for me to say that the producer is the boss? A. That is fair.

Q. Is there anybody in the organization who may usurp the power of the producer? A. No.

Q. Are you familiar with the organization of the national touring company of Grease from its inception? A. Yes, I am.

Q. I call your attention to the engagement in Baltimore, Maryland.

Did you see the show in Baltimore? A. Yes.

Q. Tell us when you saw the show? A. We saw it for the first time on opening night.

Q. Was there anything—did you see the show before the opening night performance? A. No. We were in the theatre before the opening night performance.

Of course we saw the show from its opening night in Boston.

Q. Did you see the show in Boston? A. Yes.

Q. Where did you see it again? A. Philadelphia.

[290] Q. After Philadelphia, where did you see it? A. Baltimore.

Q. Did you attend any rehearsals in Baltimore? A. No, there were none.

Q. Did you see the physical set prior to the opening night curtain in Baltimore? A. Yes.

Q. Who was with you when you saw it? A. Ken Waissman.

Q. When was that? Tell us what date and what time of the day? A. It was on the opening day, January 29th, and I believe it was in the afternoon.

Q. Do you have with you your diary for the year 1973? A. Yes, I do.

Q. Will you tell us what it contains generally? A. It contains all of my appointments, all of Ken's appointments and where we traveled.

Judge Sherman: I take it Mr. Waissman is your husband?

The Witness: Yes, he is.

Q. Where is that diary kept? A. On my desk in the office.

Q. When you are out of town where is it kept? A. It stays in the office.

[291] Q. Who makes the entries in the diary? A. Sometimes I do and sometimes our assistant, Linda Scullar, does.

Q. Did you refer to your diary for the Baltimore date? A. I knew it.

Judge Sherman: I take it you are planning on having the witness refer to her diary periodically?

Mr. Arnold: Yes.

Judge Sherman: Do you have any objection to that?

Mr. Pollack: No.

I may want to see it.

Mr. Arnold: That is perfectly all right.

Q. Tell us what you did with Ken Waissman on the afternoon of the 29th of April. A. We wanted to see the set in the theatre.

The engagement was very important to us. It is our home town and the Morris Mechanic Theatre is a difficult theatre to fill.

We had a lot of publicity—

Mr. Arnold: May the record indicate this was January 29th and not April 29th as I indicated.

Q. This was January 29, 1973? A. That's right.

Q. Baltimore is the home town for both of you? A. Yes.

[292] Q. Tell us what you saw when you examined the set that afternoon? A. The set looked generally fine.

We went off to the extreme sides of the audience side of the theatre to check the sight lines and realized that from certain of those extreme areas—certain of them you couldn't do anything about but certain other of them you couldn't see the second level of the set where there was a lot of action taking place.

We asked M. Doucette if he could move either the hard or soft legs back so as many people as possible could see that action.

He did move them and more people were able to see the action on that level of the set.

Q. Prior to that instruction had there ever been any instruction eminating from either of you particularly to that point on the set? A. Not that I recall.

Q. After the performance, do you recall going backstage? A. Yes.

Q. What was your feeling after seeing the opening night performance in Baltimore?

Mr. Pollack: Objection, your Honor.

Judge Sherman: I will allow it.

[293] A. We were elated.

It had been a good performance. It seemed to have gone over very well and we were anxious to communicate that.

Q. And the show was what you wanted it to be? A. Yes.

Q. Did you offer any commendation to any members of the crew that evening? A. Yes.

Ken got onto the backstage microphone and congratulated everyone for what they did that night.

I understand it was defective and some of the people didn't hear so we reiterated it to the people around us.

Q. Did you or Ken make any special commendation to Joseph Doucette, Sr.? A. I don't believe so.

Q. You could have?

Did you see Joseph Doucette, Sr. that night? A. I saw just about everyone that night.

Q. Did you speak to him? A. I don't remember.

Q. Did you hear Ken make any special commendation? A. He could have. I don't believe so.

Q. When was the next occasion after Baltimore that you saw the show? [294] A. Washington.

Q. How many places had the show played between Baltimore and Washington? A. Three.

Q. Is there any reason why you hadn't seen it any of those three places? A. Yes.

The primary reason was because we were in London for much of that time.

The secondary reason was that we don't feel it is necessary to catch the show in each location.

Q. When did you return to London? A. If I may refer to my diary, we came back on Saturday, March 10th.

Q. When did you see the show in Washington? A. Wednesday, March 21st.

Q. Did Mr. Waissman go with you? A. Yes, he did.

Q. When was the first performance that you saw in Washington? A. The 24th of—

Q. The 24th? A. I'm sorry, the 21st of March, an evening performance.

Q. Tell us what, if anything, you saw then, at that performance? [295] A. We noticed that the blacks had not been hung for masking. Ken was very, very upset about that.

Q. Did you notice anything else? A. On the set, I don't recall anything else.

Q. How about props? A. Nothing else sticks out in my mind as worth commenting on.

Q. You say Ken was very upset? A. Yes.

We both insisted that the show look as good as possible at all times.

Q. What did you do or say with respect to the blacks not being hung? A. We had two production stage managers at that time, Bill Leddich was finishing up and Frank Marino was starting.

Q. Did you order the blacks to be used from then on? A. Well, of course.

It was not practical financially to hang them at that moment.

It is what we would have liked but we had no choice.

Mr. Pollack: I would like a foundation, your Honor.

I assume the witness is testifying as to verbal orders she gave and I would like to know to whom she gave orders and when.

[296] Q. To whom did you give the instructions? A. We didn't give any instructions.

Q. To whom did you speak about it, with respect to the blacks not being hung? A. Ken spoke to Bill Leddich.

Q. Were you there? A. I believe I was there.

Q. Do you recall this conversation or do you not recall it? A. I don't recall it well enough to discuss it.

Q. Do you recall whether anybody gave you any excuses why the blacks were not hung? A. I don't recall. Mr. Waissman may.

* * *

A. We stopped off in Baltimore and we returned to New York on March 27th.

Q. Did anything else happen in Washington? A. Not that I remember.

[297] Q. When is the next incident that you can recall that has any bearing on this case? A. The next incident was in Toronto.

Q. Now, tell us when you went to Toronto. A. I went on Wednesday, April 18th.

Q. Who went with you? A. Tommy Smith our production supervisor and Pat Birch, the choreographer.

Q. You all flew there together? A. Yes.

Q. And about what time did you arrive in Toronto? A. Around noon or 1:00.

Q. What did you do first? A. We checked into a hotel.

Q. And then? A. Then we went to the theatre unannounced.

Q. Was there a performance then? A. Yes.

Q. What day of the week was that? A. Wednesday.

Q. Did anybody in Toronto having any connection with Grease know that you were coming? A. Don Antonelli.

Q. Did he know that you were coming to that performance? A. I believe so.

[298] Q. The three of you then went to the performance on the 18th? A. Yes.

Q. Tell us what happened on that performance? A. I walked into the theatre and as I began watching the show, I realized that I was very upset because the condition of the scenery was such that I could not believe that our names were on that production.

Q. What do you mean? A. The scenery was in shoddy condition.

There were photo panels that were split. There was masking that was not hung.

There were panels not hung.

Our full show was not on stage physically and I was very upset.

Q. Could you characterize the over-all appearance of the stage? A. Yes, it was shoddy.

Q. Were Pat Birch and Tommy Smith with you? A. Yes.

Now, Pat Birch was primarily concerned with what the actors were doing.

Tommy Smith and I were incredibly concerned with the condition of our set.

Q. What did you do, if anything, after the performance? [299] A. Tommy Smith and I spoke to Frank Marino.

Q. You sought him out or he came to you or what? A. Yes.

We spoke to Don Antonelli and Frank Marino. We asked where Joe Doucette was. He wasn't in Toronto, hadn't been there for several days and they thought he might be coming back Thursday.

Q. Where was he? A. In Detroit.

Q. Did they indicate to you when he left? A. A couple of days ago.

Q. And they didn't know when he would return? A. They thought it would be on Thursday.

Q. What did you discuss with Don and Frank on that oc-

casion? A. The condition of the set and why something had to be done about it, why there were pieces not hung on the stage.

Frank Marino who had joined the company in Washington was told—

Q. What did he say? A. He did not realize there were pieces not hung.

That had been the show he had seen since the time he joined the national company and he told me that he was confused because the show that he saw in New York was [300] not the same one that he saw on the road.

Q. Was there any explanation as to why the show was not the same? A. He was told by Joe Doucette that that was the way he was given permission to hang it.

* * *

Q. Did Frank tell you that he knew about the shoddy condition of the set or why he had allowed it to become that way? A. He said he had trouble getting along with Joe Doucette and that Joe was not responding to his requests.

Q. Did he indicate that he wanted things done to this set that Joe refused to do? A. Yes.

Q. What was the next thing you did? A. Well, very importantly I asked Tommy if the full [301] show could have been hung in Toronto and he, as angry as I was, said that there was no question but that we could have had a full set hung in Toronto.

Frank was new as production stage manager and there apparently were certain things he was not told and Tommy proceeded to fill in the gaps.

Q. Were you present when Tommy was talking to Frank Marino filling in the gaps as you described? A. No.

Q. What did you do next? A. I went to a telephone.

Q. Who did you call? A. Ken.

Q. Where did you reach Ken? A. At the office, and I told him that I was furious, that the show looked terrible and that it looked like it had been out on the road for a year, and it was playing to an audience who expected a fresh complete set and our names were on that production.

I was very angry.

Q. What else did you say?

Did you cast any blame? A. Ken asked why and who I had talked to and I told him that all things pointed to the fact that Joe Doucette had not hung the show properly and had allowed [302] a photo panel to be seen by the audience when there was a split in it which meant it was not packed properly.

He had not put in a request to have it replaced and Ken started ranting and raving and saying he wanted the man fired.

I said, let me talk to Eddie Davis. Obviously he has to be let go but Eddie should be informed.

Q. This was on the 18th of April? A. Yes.

Q. Did you tell Ken that Joe Doucette was not on the premises? A. Yes.

Q. Did you tell Ken you didn't know when Joe would be expected? A. That's right.

I said I couldn't get a definite answer as to when he would be back.

Q. Did you and Ken decide anything at that moment? A. We decided that the set had to be freshed up before going to Detroit.

Q. As a result of your discussion with Ken did you then do anything else? A. Yes.

I called Eddie Davis.

Q. Where did you reach him? [303] A. At his office, I believe, because this was still in the afternoon.

Q. What did you say to Eddie and what did he say to you? A. I told Eddie about the condition of the set. I told him Joe Doucette was not on the premises, hadn't been there for a couple of days.

I told him there were torn panels, painting that needed to be done.

I told him there were panels and masking that was not hung.

And in general, I and Ken were upset and we both wanted Joe Doucette fired.

Q. What did he say? A. He wanted to discuss it with Don Antonelli and Frank Marino.

He was upset that the show was allowed to get to that condition and he okayed a paint call which was desperately needed even though that meant getting into overtime.

Q. Did Eddie make any comment when you said you wanted to get rid of Doucette? A. He didn't want to agree to it at that moment because it would have meant disrupting the show.

Q. Did you and Ken have the authority to fire Joe without [304] Joe's agreement? A. Yes.

He disagrees with everything we do, though.

Q. But your word is final? A. Right.

Q. Did you take offense at the fact that Eddie did not go along with your decision? A. Not at all.

* * *

Q. As a result of your conversation with Eddie, what course of action was decided for you to take and for Eddie to take? A. Well, at that point, having expressed my dissatisfaction and Ken's, I left the issue for the moment to the people to take care of this, Tommy Smith and Eddie Davis.

Eddie and Tommy both had people that they had to talk to and the best thing was to get to the root of the issue and find

out how it happened and how to correct it before [305] this important opening in Detroit.

Q. Did you do anything else that afternoon with respect to this problem you had just learned of? A. I had talked to the people I had to talk to.

For the time being I left it alone.

Q. Did you then see the evening performance? A. Yes.

Q. Was it any different than the afternoon performance? A. I don't see how it could have been.

Q. Did you see anything in the evening performance that perhaps escaped your eye in the afternoon performance? A. I don't think so.

I basically relied on Tommy. He knows the technical show intimately.

Q. What did you do after the evening show? A. I called Ken again to discuss the fact that the wheels were set in motion to do something about this.

I called Eddie again to make sure that he was talking to the right people and getting the right answers and Tommy and Frank Marino were discussing things and later Tommy and I talked for quite awhile.

I also talked with Frank.

Q. Tell us the subject of your conditions with—of your conversation with Tommy first. A. Tommy said when he talked to Frank Marino that Frank [306] had no knowledge that there was more to the show than he had seen.

Tommy graphically described the specific pieces that were missing, how they could have gone up in the Royal Alexander theatre in Toronto and Tommy and Frank also talked about the dissatifaction that Frank had with Joe Doucette.

Q. And did Tommy report to you as to the dissatisfaction which Frank had with Joe Doucette? A. Yes.

Q. Tell us what that was. A. It is a second-hand conversa-

tion and it is difficult to remember completely in terms of specific words.

Tommy just told me, as Frank had told me later, that he had difficulty getting Joe Doucette to do what he wanted done—I cannot complete the sentence because I could not swear to what I was going to say.

Q. What is your recollection? A. There is a relationship between the production stage manager and the master carpenter.

They are supposed to work together. The carpenter will do what the production manager requests and as such there is a way of obtaining feedback in terms of keeping that show correct and fresh and the way it should be.

[307] Frank could not get that cooperation from Joe Doucette.

Q. Prior to the conversation with Tommy Smith, had you been aware that Marino had not been able to obtain that working relationship with Joe Doucette? A. Only briefly, after talking to Frank after the matinee.

I left it to Tommy to discuss it with Frank in detail.

Q. After Tommy's conversation, you are aware that the production stage manager couldn't get the master carpenter to do what he requested him to do? A. Correct.

Mr. Pollack: Objection.

Calls for a conclusion.

Judge Sherman: Well, it was leading and hopefully it is a summary of what was said before.

I will sustain the objection.

Q. Did you have a conversation with Frank Marino after your conversation with Tommy? A. Yes.

Q. What was the substance of that conversation with Frank Marino? A. He had many things to discuss because

there were other reasons why I had to talk to Frank which had nothing to do with Mr. Doucette.

[308] We talked about what was to be done about the set and the fact that Eddie Davis had been consulted and the fact that there was possibly going to be a paint call on Good Friday and I did a lot of listening, just in general, to Frank's dissatisfaction.

Q. Frank expressed to you his dissatisfaction with what and whom? A. With Joe Doucette and also with another matter that we went into that has no bearing on this case.

Q. That was Wednesday the 18th that all of this occurred? A. That's right.

Now, some of these things may have happened on Thursday.

I have the two days mixed up in my mind in terms of when I talked to Frank and when Tommy spoke to him. It's hard for me to remember all the specifics.

I remember my specific reaction on Wednesday.

Q. Did anything else happen in Toronto that bears on your ultimate decision to terminate Joe Doucette? A. Only that there was never any definitive reason given why Mr. Doucette was away from Toronto for four days.

Q. Did Mr. Doucette return to Toronto while you were there? [309] A. Yes.

Q. Do you know when? A. On Thursday.

I believe it was in the afternoon during a rehearsal.

Q. Did you speak to Mr. Doucette? A. No, I did not.

Q. Did you speak to Kenny any more from Toronto on the telephone? A. I talked to him several times.

Q. Were there any conversations which particularly discussed the Doucette situation? A. Yes. Ken kept reiterating the fact that he wanted to fire Joe Doucette and I agreed with him.

We set up a meeting with Mr. Davis for Monday at 3:00 so that Tommy and I could discuss in complete detail what happened in Toronto with Eddie and with Ken.

Q. Was it Ken's desire to fire him immediately? A. Oh, yes.

Q. And what was your desire? A. My desire was the same except that I realized in order for the organization to go forward we had to sit down with Eddie and Tommy, not to discuss whether Mr. Doucette should be fired, but to discuss when, for the good of the company.

[310] Also Mr. Davis was entitled to a detailed explanation of everything that went on in Toronto.

Q. Did you return to New York? A. Yes, on Friday.

Q. Tell us what happened that weekend. A. When I got home, Ken was furious. He wanted Joe fired immediately.

He was yelling and screaming and wanted Joe out of the theatre.

He didn't want anybody touching that set who didn't have the respect and care for that production that we had.

I kept telling Ken would you please calm down, there is nothing we can do this weekend.

We made a decision to fire him. There is nothing you can do about it on the weekend, calm down, but he didn't.

Q. He had a miserable weekend? A. Yes.

Q. Did you have a meeting with Eddie on the 3rd of April? A. Yes.

Q. Who was present? A. Myself, Eddie Davis, Ken Waissman and Tommy Smith.

Q. Where was it? [311] A. Our office.

Q. Tell us what occurred at our meeting. A. We began discussing the Joe Doucette situation in Toronto by the specific things that had been done incorrectly and ineptly.

Tommy was there at the time.

I relied on Tommy for the specifics that he knew of.

We talked about Joe's not being around for four days and we talked about firing Joe.

After we discussed a few more things that had to do with the artistic and performance side of the production, Tommy left and Eddie, Ken and I decided when he was to be fired.

Q. What in particular disturbed you about the four-day absence? A. It only took six to eight hours to spot lines. He was gone for four days and we didn't know why.

Q. At that meeting was any definite decision arrived at with respect to Joe Doucette's employment? A. Yes. He was to be fired.

Q. Whose decision was that? A. Ken's and mine.

Q. To whom was that relayed? A. To Eddie Davis.

[312] Q. Was any time of discharge mentioned? A. We talked about—Ken wanted to fire him immediately. Eddie resisted the idea of firing Joe initially because it would have disrupted an organization.

It is a big decision to fire a master carpenter. He is crucial to the financial and physical well being of the production.

But it was our irrevocable decision. There was no way that Eddie could get us to change our minds.

He asked if we would please let him make the decision as to when the firing would take place.

He wanted it done in Los Angeles after the show opened in Los Angeles because in that way we would have time to replace him.

We agreed with his decision.

Q. Did you instruct Eddie to start looking for a replacement for Joe? A. Yes.

Q. I call your attention to Detroit.

Tell us when the show opened in Detroit. A. April 23rd.

Q. Did there come to your attention anything about the sound in Detroit? A. Yes.

Frank Marino was upset about the way the sound [313] was being handled.

Q. Did Joe Doucette have any connection with the way sound was handled? A. No.

Q. It was not his department, was it? A. No.

Q. Now, repeat, Frank Marino had learned what? A. He was dissatisfied with the sound especially in Detroit.

He was concerned to the point of asking us to come up and listen and take a look at what was being done.

Q. Let me interrupt you for a moment.

Is the sound on Grease a rather simple or complicated matter? A. It is immensely complicated and it is crucial to the success of our show.

Q. How was the method of transmitting sound determined for this show? A. I'm sorry. I don't understand the question.

Q. Let me rephrase the question.

Was a sound engineer or designer engaged by the Grease Company with respect to creating the sound for the show? A. Yes.

There was a sound designer who created the method [314] in which the sound would be handled, Mr. Jack Scheering.

Q. Does it take in mikes, and amplifiers— A. That's right.

Mr. Pollack: Why are we going into testimony about the sound system when the witness said it had nothing to do with Mr. Doucette?

Mr. Arnold: We are going into the discharge of Mr. Weeden.

Mr. Pollack: That isn't at issue here.

Judge Sherman: It isn't unless the facts are enlightening with respect to the issues we have before us.

I think I will rely on Mr. Arnold at this point but we are not litigating the fact of whether the company was right or wrong in discharging Mr. Weeden.

Mr. Arnold: I will state exactly where I am going.

In effect, the sound problem arose, it became a serious problem.

Mr. Doucette was involved to a minor degree but there occurred an incident in Detroit in connection with the sound problem which I would like brought out.

Judge Sherman: An incident that is relevant to Mr. Doucette's discharge?

Mr. Arnold: Well, with respect to the attitude of the producers with respect to the people on their staff.

That when they make a decision which they determine [315] for the best interests of the show, no matter what the consequences are, it is their decision.

I will short-circuit the entire thing.

Judge Sherman: Please do.

Q. Maxine, do you recall an incident in the lobby of the theatre in Detroit when right after you and Ken had made a decision to fire Mr. Weeden in which Mr. Marino or Mr. Antonelli made a remark to you with respect to the rest of the crew? A. Yes.

It would not have been Mr. Marino. It was Mr. Antonelli.

Q. Who was present at that conversation? A. Ken, Don Antonelli. I don't remember whether Jack Sheering was there. I believe he was.

Q. What did Mr. Antonelli say to you? A. We told Don Antonelli that we decided to fire Bob Weeden because of his incompetence in the handling of the production.

Don cautioned us against that decision and said it would cause a serious disruption backstage.

Q. What did you or Ken say about that? A. We said, we don't care about a serious disruption, our show is being damaged.

Q. And you said that this was what you wanted? [316] A. There was no question. The man had to go.

He was not performing properly and the show was suffering because of his performance.

Q. And it was done? A. That's right.

Q. Was Joe Doucette, Sr. discharged because of the fact that he engaged in union activities or other concerted activities for the purpose of collective bargaining or other mutual protection? A. Absolutely not.

Mr. Arnold: No further questions.

CROSS EXAMINATION

Q. (By Mr. Pollack) I would like to direct your attention to January 29th.

I believe you said the show at that time was in Baltimore? A. That's right.

Q. Did you have any conversation on or about January 29th with Mr. Doucette about the sight lines? A. Yes.

Q. And didn't you and Mr. Waissman ask Mr. Doucette if he could do his best to improve the sight line? A. Yes.

Q. And didn't he improve the sight lines or try to? [317] A. Yes.

Q. And at that time you didn't tell Mr. Doucette that you were unhappy with his work, did you? A. No.

Q. And you didn't threaten to fire him? A. No.

Q. Still talking about January 29th, did you tell the production stage manager, Mr. Leddich, that the sight lines had to be improved? A. No, there was no need.

Q. Wasn't it Mr. Leddich's responsibility to check sight lines? A. I don't know. At the time of this specific incident, Mr. Doucette was on stage, he accomplished what we asked and there was no need to take it any further.

Q. I direct your attention to a period of April when the show was in Toronto.

You mentioned that there were—that a paint call was necessary.

Isn't it true that Mr. Doucette couldn't call a paint call without the approval of the higher-ups in the company? A. As I understand it.

Q. Did Mr. Marino have the authority to have a paint call? [318] A. He had the authority in discussion with Don Antonelli to call one, I believe.

Q. In Toronto when you saw the show, did you notice that some of the props were in poor condition? A. Yes, but they weren't in good condition.

Q. Still directing your attention to the time the show was in Toronto, did you talk to Mr. Davis about terminating Mr. Marino? A. No.

Q. Did you at that time tell Mr. Doucette that you wanted him fired? A. No.

Q. Did you express to Mr. Doucette your dissatisfaction with his work? A. I don't discuss those things with Mr. Doucette.

I discuss them with his superiors who are my experts and they relate these things to Mr. Doucette.

* * *

[320] I assume that was being taken care of.

Q. You did know that a part of Mr. Doucette's duties were to go to a town as an advance man as an advance prior to the show moving there? A. Yes.

Q. While the show was in Toronto there was a house carpenter, wasn't there? A. I assume so.

Q. Also Mr. Doucette, Jr. was present in Toronto; is that correct? A. Yes.

Q. Did you ever talk to Mr. Doucette, Jr. about correcting the scenery and maintaining it? A. No. It never would have occurred to me.

Q. One more question with respect to the condition of the show when it was in Toronto.

Do you know which pieces were missing out of the scenery? A. I remember one specific piece and that was the [321] Edsel panel and also there was masking missing.

Q. Wasn't the masking missing due to the condition of the theatre in that city? A. When I discussed that problem with Tommy Smith he mentioned at least one way in which the masking could have been hung.

Q. Did Mr. Davis tell you that one of the pieces was missing so that the show could be set up in a shorter amount of time? A. He never did, not for the Royal X in Toronto.

Q. Were you aware that the show in Toronto was set up in one day? A. I assumed it was.

Q. The show in Baltimore was set up in two days; isn't that correct? A. I believe so, since it has been brought to my recollection the first time the show went up in one day was in Washington.

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[322] KENNETH WAISSMAN, * * *

Direct Examination

Q. (By Mr. Arnold) Mr. Waissman, are you one of the producers of Grease? A. Yes.

Q. The other producer is Maxine Fox? A. Yes.

Q. Were you present when Miss Fox testified as to the basic functions of producer? A. Yes.

Q. Would you agree with her description? A. Yes.

Q. Would you add anything to her description? A. I don't remember her description.

[323] Q. How would you describe it? A. Well, she summed it up when she said the producer is the boss.

He is the only one in the production who is not only the boss of the creative side but the business side also.

Q. You heard Miss Fox testify with respect to an incident in Baltimore? A. Yes.

Q. Would there be anything that you would add to that description? A. Well, it was in the afternoon the day of the opening.

I had said to Bill Leddich in Philadelphia backstage, because we were aware of the problem in the Mechanic Theatre in Baltimore with sight lines, that I wanted every effort made to make sure that we kept as much of the sight line as possible.

And he said every effort would be made.

I was a little bit upset but I upset easily on things like this.

When I walked into the theatre and saw that we had the photographic porthole up and jutting out from the porthole on each side, I saw black curtains jutting out which were not necessary.

[324] I asked Mr. Doucette to remove the curtains because I wanted as much as the sight line saved so there was no need for the black curtains.

He said he would remove it and he did.

Q. Was it removed or moved? A. He got it out of the way.

I don't think he took them down. He just moved them away.

I mean, what would I care what he did with them.

Q. It is important to know whether they were removed or moved.

Would you know? A. I wouldn't know.

Once my request was fulfilled, they were no longer to anybody in the theatre and that's why I thanked him.

Judge Sherman: What is a photographic porthole?

The Witness: The show is designed so that the per-

sinium arch has a photographic porthole that goes up one side and around the top.

On that porthole are a series of yearbook photographs taken from Maxine's year book, my year book and the author's yearbook.

It kind of forms a frame around the show.

Artistically it's very important because it holds the show in and focuses the audience's attention [325] directly into the center so the show does not look lost and it looks like a bigger musical than it actually is.

It creates an illusion.

Q. Would you say that is a three-sided frame, two sides and a top? A. Right.

Q. Along which are blown up photographs? A. Right.

Q. Creating an impression of a frame around the stage? A. Correct.

Q. And those black curtains obscured the two sides? A. No.

* * *

A. It is a solid leg that starts from the bottom of the stage and goes to the top of the persimium arch.

There is one side and one on the other side.

Now, there was a black curtain that was protruding past it from behind and onto the stage so that when the audience looked at the stage and they saw the porthole directly to the onstage part of that porthole, they saw black curtain coming out directly passing behind it.

Q. Obscuring it? [326] A. It did not obscure the porthold but it obscured that part of the stage behind the porthole.

Q. In other words, action on the stage behind the porthole alongside stage could have been obscured by the— A. The porthold is on the right and left side of the stage.

If you were on the right side of the stage there was a curtain passing behind the porthole moving onto the stage and onto the other side there was a curtain passing behind the porthole moving out onto the stage.

I asked that this curtain be removed because part of the audience's view was obstructed.

Judge Sherman: In other words, they weren't between the portholes and the persinium arch. They in effect added to the breadth of the portholes as far as the audience was concerned?

The Witness: Yes.

Q. I direct your attention to—

Judge Sherman: Incidentally, Mr. Arnold, in connection with your inquiries about Mr. Waissman's version of the conversations that occurred between he and his wife and other members of management, I would like to draw your attention to the fact that the evidence as to this kind of conversation is evidence which [327] is impossible for Mr. Doucette to contradict since he was not there.

One of the most useful ways of determining as to whether these conversations took place is to compare that statement with the other person.

Mr. Arnold: Your Honor, I did that only for Baltimore.

Judge Sherman: I didn't mean any—for Baltimore, but—

Mr. Arnold: And the remaining part of the conversations, I will ask him to testify to.

Judge Sherman: Thank you.

Q. I call your attention to April 18, 1973.

Can you tell me where you were on that day and where Maxine was on that day? A. I was in New York City and Maxine was in Toronto.

Q. Do you know who she went to Toronto with? A. She went to Toronto with Tommy Smith and Patricia Birch.

Q. Did you on that day receive a call from Maxine from Toronto? A. Yes.

Q. Where were you? A. In the office.

Q. Approximately what time was the first telephone call you received? [328-329] A. About 5, 5:30.

Q. Tell us what Maxine said to you and what you said to Maxine. A. Well, my first thing was, how are things going? She was very upset.

She said the show looks terribly shoddy. It is a good thing you didn't come.

She said it's a mess and it's an insult to the audience.

She said there are things that weren't hung.

She said the edsel panel wasn't hung.

She said there was a photograph that was split.

She said the set was dirty and in bad need of repair and she said it's disgraceful and she's embarrassed.

Q. What did you say? A. I said why didn't we know this, why weren't we told.

I said where is the carpenter and what is he doing.

She said he is in Detroit.

I said what is he doing there.

She said spotting lines.

I said, how long does it take to spot lines.

She said they expect him back tomorrow.

I said, we have to get rid of him, this is terrible. I just blew my top and when I blow my top I can't always tell you what I say.

[330] I said, I am furious. I said, I am calling Don Antonelli.

She said, no, I will call Eddie. I will fill him in on the details and we'll talk later.

Q. Did you subsequently have a conversation with Maxine or a conversation with Eddie? A. I talked to Eddie shortly thereafter.

Q. You talked to Eddie before you spoke to Maxine again? A. We have an intercom, a button on my desk which rings a telephone on Eddie's desk.

I would say that based upon normal experiences, I usually buzz him first when I am angry.

Q. You think you must have called him first? A. Yes.

Q. Describe the conversation between you and Eddie Davis. A. I said I was appalled, very upset, this was the one thing we tried to avoid.

We said we wanted this show to look like the New York show everywhere we went.

In Toronto business was bad and then I said, now I know why we're doing bad business in Toronto.

Eddie said that is not really possibly why.

I said I want the carpenter fired.

[331] Eddie said we have to talk about it. You don't want to do anything rash.

Eddie said, let's hear what Maxine and Tommy have to say.

Q. Did you agree to wait? A. Well, what could I do. I mumbled something and I had to wait.

Q. Is it normally the function of Eddie Davis to calm you down when you get angry? A. Sometimes he will try to calm me down and sometimes his reasons have a great deal of sense.

Maxine and I refused to surround ourselves with yes people.

We only want to surround ourselves with people who argue with us. That is the only way you have success.

Eddie argues with us a great deal. Sometimes after the argument Maxine and I look around at each other and think and make the same decision we made before the argument.

Other times we'll do it Eddie's way.

Q. Did you have any other conversations with Maxine before she returned? A. Yes.

She called me that evening and said she had talked to Frank Marino. There seemed to be some problems going [332] on with Frank's relationship to the carpenter, that Tommy was talking with Frank. She was still very upset. I reiterated the fact that I want the master carpenter changed.

I wanted him out of there because to let us get away with having a show like that it is unforgivable and something that is unforgivable is irrevocable.

Q. Maxine returned to New York on the weekend? A. Yes.

Q. Did you discuss it with her on the weekend? A. I tortured her on the weekend.

All weekend I said to Maxine this is why business is going down. This is why the tour is lousy and it is going to look bad.

I said, I am going to call Don Antonelli and tell him to give notice. I didn't mean it. I was saying it to torture her.

She said she doesn't want to hear any more because it can't be resolved until Monday morning, at which time she picked up a book and refused to talk to me, so I calmed down.

Q. Did you have a meeting Monday morning in Eddie's office? A. Yes.

Q. Who was present? [333] A. I, Maxine, Eddie and Tommy Smith.

Q. Will you tell us what the four of you discussed? A. Tommy and Maxine gave a detailed report.

Some of it was a rehash, some of it were details of the Toronto trip.

I, of course, was still on my soap box. I wanted the master carpenter fired. I wanted him out of there.

I was upset that there was a problem between him and our new stage manager.

I felt that our new stage manager was being taken for a ride because it would have been the duty of the dedicated people of the company to have the new stage manager know what is to be on that stage and know what is not to be on that stage if permission had been given, which in this case it had not.

When that part of the meeting was over and Tommy left, Eddie began his big sales pitch and why we should not fire Joe Doucette.

Maxine and I were in complete agreement that he should be fired and we agreed that Eddie would pick the time as to when he would be fired.

We figured if I called Don Antonelli and had the carpenter fired, we would never have gotten to Detroit.

Q. When did the show leave Toronto, what date? A. You see, when we had the meeting on Monday, we [334] were in the process of finishing up the tie-in in Detroit.

The show finished in Toronto and it was on April 21st.

Q. Which would have been Saturday? A. Yes.

They would normally, under the way it's done, they would start loading out after the curtain comes down.

Now, I am not told we—I am not told when the load-in or load-out begins, so I am assuming this.

Q. Had you terminated the master carpenter on the 20th or 21st you would have had nobody to move the show? A. Right.

Q. On the 21st it moved into Detroit and— A. Right.

Q. —and the conclusion of the meeting was what? A. That Eddie felt that we would have to keep the carpenter on.

We had a couple of one-week dates coming up after the finish of Detroit.

We would have to keep the carpenter until we got ourselves situated in Los Angeles.

We asked him to immediately start looking for someone. I hoped that he found somebody before Los Angeles.

He said whenever I find someone I will do it. Let me make the decision.

[335] Q. As far as you are concerned, the decision to terminate Joseph Doucette, Sr. was made in your office on the 23rd of April, 1973? A. Yes.

Q. And was any mention made of Joe Doucette, Jr.? A. Yes, because one of the things in the report was that the flies were coming in and out like molasses. It slows down the rhythm of the show. The show depends upon energy.

Joe Doucette, Jr. was in charge of the flies and although I would never consider him to be responsible, because it is the master carpenter who is responsible, he, under the master carpenter's supervision was not competent to keep the rhythm of the show going in the proper way.

There was all of this discussed at the meeting about the slowness of the flies.

The comment was, well, what do you expect, it's Joe Doucette's son.

Q. Who made that comment? A. I probably made it.

Q. The decision was also made then that Joe Doucette, Jr. would be terminated also? A. My memory is very cloudy on that.

I mean, I can't sit here and say that.

[336] Q. Was there any doubt in your mind that the determination would be for both of them? A. Yes.

It never occurred to me that the son was going to stay, but I don't remember saying to Eddie, make sure the son goes also.

If you ask me what was in my head, obviously, I saw them all together.

It would not have occurred to me that he would stay.

Q. Did there come a time in Detroit subsequent to the termination of Mr. Weeden that you had a conversation with Frank Marino? A. Yes.

Now, repeat the question?

Q. Did you have a conversation in Detroit with Frank Marino? A. Yes.

Q. Will you tell us when that conversation took place? A. We were in Detroit on a Thursday night and I think it was the fourth week of the run.

Maxine's diary would confirm the date.

Judge Sherman: Any objection to his looking at Miss Fox' diary?

Mr. Pollack: No.

[337] Mr. Arnold: It's his diary also.

Judge Sherman: Excuse me. Their joint diary.

A. May 17th, Detroit.

Yes, earlier that evening in the lobby in the presence of Don Antonelli, Jack Sherring, Frank Marino, Miss Fox and myself, I announced that the sound man was being fired.

I also mentioned a lot of reasons but I wouldn't bore the court with the reasons.

At which point Don Antonelli pointed out that we better think twice about firing him because it could cause—the word he was—the word was "a mutiny backstage."

At which point I said I can't run a business worrying about that kind of thing.

I said the man has performed the sign of trying to artistically do things on the show and has not followed the design of the sound designer and regardless of whatever consequences we may face, we can only get rid of him.

At which time Don Antonelli gulped and shut up.

Later that evening Frank Marino came over to our hotel room—

Mr. Pollack: Your honor, maybe this is a proper time. Counsel knows what testimony he is eliciting but I thought your ruling was that we weren't going to try or [338] litigate the discharge of Mr. Weeden—

The Witness: We are finished with that.

Mr. Arnold: It was just to call the court's attention to the attitude of the producer with respect to his employees.

Judge Sherman: Surely.

A. Mr. Marino came to our hotel room and we proceeded to talk until well after midnight.

He was upset with our dissatisfaction of the show both in Toronto and now over the sound crisis.

He was upset at his relationship with the carpenter and didn't feel he was getting the kind of support that he would like to have.

I informed him then that we had already decided after that Toronto incident that Joe was going to be replaced and that Eddie was going to pick a time so that problem was at least for the time being on the shelf and being resolved.

We discussed many other things regarding his control backstage and that we must keep the show on perfect shape and that we must be notified the minute anything like this happens and so forth and so on.

Q. Did you learn from him that night any information that you had never had before with respect to the cuts in the show that occurred in Toronto? [339] A. Well, he mentioned—when I told him that it was so unfo[illegible]le in Toronto, he mentioned to me, he said, when I joined the show in Washington I noticed that it was different than when I was in New York.

He said, but I was told by the carpenter that after Boston this is the way we had always done it.

I said, we saw it in Philadelphia and in Baltimore and it was not done that way.

He said I didn't see it in Philadelphia and Baltimore. He said, I joined it in Washington and that is the way I saw it.

And he said, I had been told that is the way it had been done since Boston.

Q. Did you and Miss Fox give instructions to make such cuts after Boston? A. Definitely not.

It would be totally out of character.

Q. Did you come to the decision to terminate the employment of Joseph Doucette, Sr. by reason of the fact that he engaged in union activities or other protected activities for the purpose of— A. No.

Q. Did you know that he had been engaged in union activities with respect to the other employees? A. No.

[340] Mr. Arnold: No further questions.

CROSS EXAMINATION

Q. (By Mr. Pollack) Mr. Waissman, isn't the—isn't it part of the responsibilities of the production stage manager to make sure that the sets and props are all in the right condition? A. He has the over-all supervision of the backstage, but you must remember that a show is a collaborative effort and no one person can take the total thing on their shoulders without the support of the people that work directly with them.

Q. Isn't it the responsibility of the production stage manager to notify you, Mr. Davis, Mr. Antonelli— A. Frank Marino—

Judge Sherman: Let him finish so you will know what to reply to it.

Q. Wouldn't it be the job of the production stage manager to notify somebody higher up if the sets or props were not in the proper condition? A. I think we have explained that in our opinion Frank Marino had been misled and did not know that certain things were not there that should have been there.

In regard to a couple of things like, for example, not letting us know that the panel had been torn, [341] he was duly bawled out but it was our opinion that we did not want to fire him, only the master carpenter was to be fired.

Q. Please answer my question.

Mr. Arnold: I think the answer was responsive, your Honor.

Judge Sherman: I thought he answered it.

The Witness: I thought I answered the question.

Q. Isn't it a fact, Mr. Waissman, that the carpenter takes his orders from the production stage manager?

Isn't the production stage manager the one in charge? A. No, it's not true.

Q. It is not true? A. No.

Q. Doesn't the carpenter also take orders from the company manager? A. The carpenter is working under the auspices of both the production stage manager and the company manager.

If the carpenter waits to be given orders, if he doesn't initiate action, he should be fired.

Q. Is the company manager the highest ranking company official with the touring company? A. The company manager is responsible for everything [342] that happens from the front of the stage to the back of the house.

The company manager's opinion on anything artistic is about as valid as my grandmother's.

Q. You testified you were unhappy with the way the flies worked in Toronto.

Aren't the flies considered the responsibility of the stage manager? A. The stage manager gives the cue but the speed at which they come in is the carpentry department.

Q. But again, doesn't the carpentry department work in conjunction with the stage manager? A. Yes.

Q. Or in coordination, whatever words you use? A. Yes.

You see, again, the stage manager was new. He was not familiar with the rhythm of the show.

The carpentry department had been with us since Boston.

It was my feeling after hearing the report that why the hell—

The Witness: Excuse me.

A. —why didn't they support him and show him what the rhythm of the show should be.

Q. Did you inform Mr. Doucette, Jr. that you were [343] unhappy with the way the flies worked? A. I would never discuss that with Mr. Doucette, Jr., never.

I would discuss it with the production stage manager, however.

Q. Did you discuss with Mr. Doucette, Sr. that you were unhappy with the condition— A. Unless Mr. Doucette, Sr. would come to me with his frustrations or problems in not being able to get things corrected, I would not go to him. I would discuss it with the production stage manager.

Q. So your answer then is no, you did not discuss it with Mr. Doucette, Sr.? A. Yes, I did not.

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THOMAS C. SMITH, * * *

[344] DIRECT EXAMINATION

Q. (By Mr. Arnold) * * *

Q. Are you presently employed by the Grease Company? A. Yes, I am.

Q. In what capacity? A. I am employed as the production stage manager and as the production supervisor.

Q. As production stage manager for all of the companies of Grease? A. Yes.

Q. How many companies of Grease are there? A. Two that are open and one that is in rehearsal right now.

Q. To open when? A. October 8th.

Q. October 8th? A. Yes.

Q. That is the New York company, the national company and the bus and truck company? [345] A. That is correct.

Q. How long have you been employed in the theatre? A. Since 1969.

Q. In what capacity have you been employed? A. As stage manager.

Q. Can you tell us in what shows you were the production stage manager? A. Fiddler on the Roof from May of 1971 to February of 1972.

Q. And— A. It was May of 1970 to February of 1972.

Q. Was that the Fiddler touring company? A. Yes.

Q. Did you travel with the company? A. Yes, I did.

Q. Did you hit most of the major cities that the Grease Company has hit? A. Yes, I did.

Q. Approximately how many times have you seen the New York production of Grease? A. About 600 times.

Q. Approximately how many times had you seen the national company of Grease prior to Toronto? A. I saw every

preview and performance in Boston up to the second night and I saw the show three times in [346] Philadelphia.

Q. Approximately how many times did you see the national company prior to Toronto? A. Maybe five times.

Q. Would you say that you're familiar with each and every aspect of that show both physically and artistically, sir? A. Yes.

Q. Are you familiar with the way the show has been frozen in New York? A. Yes, I am.

Q. Did there come a time when you went to Toronto to see the national touring company production? A. I'm sorry, can you repeat that?

Q. Did you go to Toronto to see the show? A. Yes.

Q. Can you tell us when you went to Toronto and with whom? A. I don't remember the date but it was on the same day that Pat Birch and Maxine Fox went to Toronto. A. Was that toward the beginning, the middle or end of the Toronto run? A. It was the last Wednesday of the Toronto engagement.

[347] Q. Did you travel with Maxine and Pat? A. Yes, I did.

Q. After you arrived in Toronto did you see the matinee performance on that Wednesday? A. Yes, I did.

Q. Can you look at the schedule and tell us approximately what date that was? A. The 18th.

Q. 18th? A. Yes.

Q. Of April? A. Yes.

Q. Tell us what you saw at that matinee performance of April 18th. A. Well, I saw the show in its entirety from the beginning of the show to the end.

I sat with Pat Birch and Maxine in the center of the orchestra about the eighth row back from the orchestra pit and I saw a tired-looking show and a little bit sluggish show that day.

And I was taking notes on the show as it progressed.

Q. Well, tell us what you mean by a tired-looking show. A. Well, the performances were a little slow.

I felt that the music was a little under tempo in [348] some places and in other places it was too fast so the choreography couldn't be done the way it was set.

I felt that some of the scene changes were slow and I felt that some of the props and scenery in the show were not being maintained as I felt they should be.

Q. Did you notice whether or not anything was missing from the show as you knew it to be? A. Yes.

There was a panel that was missing. The Edsel panel.

And that there was some black masking that was not there.

Do you want me to go on?

Q. Yes.

Give us everything that you can recall. A. There were some various costume things—

Q. Whatever you saw, Tom. A. There were some costume things such as scarves or things like certain people were supposed to wear certain types of belts and they weren't there.

And certain people were wearing the wrong hair style.

Q. Did you see any cracks in any of the sets? A. Yes.

There was one panel that had a crack in it that [349] was bigger than it was in Boston.

Judge Sherman: The crack was bigger?

The Witness: Yes.

Q. Was there a crack in the panel in Boston? A. Yes, there was.

Q. Did that crack that you saw in the panel in Boston take away from the physical appearance of the show? A. When the show was put up in Boston the show was new.

I was conscious of the crack being there because I saw it get put together.

It did look worse after getting put together and taken apart a number of times between the Boston opening and the Toronto run.

Q. You stated a few minutes ago that the props and scenery weren't being maintained.

What did you mean by that? A. There were tears in some of the props that were badly damaged.

There were a few scratches and marks on the stair units that I felt could have been touched up with spray paint or whatever.

Some of the benches and things used in the park scene were also in bad repair.

That's about all I can remember.

Q. All right.

[350] Do you remember Maxine's reaction during the show or after the show? A. Yes, I do.

Q. Will you describe what you remember of Maxine Fox' reaction during the show? A. Well, I was sitting—I was not sitting next to her. Pat Birch was sitting to my right and Maxine to her right.

I remember Maxine tapping me several times about things during the show and wanted to know if I was aware of certain things like perhaps the music or a costume thing or a set thing.

I don't remember what they were specifically as they happened because I was trying to write down as much as I could.

I was also saying—I was taking notes on the actors that day.

Q. Was Maxine taking notes? A. I don't believe she was writing anything down.

Q. When she tapped you, it was to call your attention to something, was it? A. Yes.

Q. Did she speak to you after she tapped you? A. Yes.

[351] Q. What was her reaction to the show? A. Well, the first time we talked at all was during the intermission and

both Pat and Maxine and I were generally upset about the whole condition of the show and we did hit on various things between the first and second act.

Q. Well, describe Maxine's attitude, if you can, with respect to the whole condition of the show. A. Angry, she was very angry.

She doesn't usually show it to me.

That particular day she did show it. She seemed very upset.

Q. What did she say to you? A. Well, I don't remember her words.

I just do remember that we had seen a very bad first act and she was very upset and Pat Birch said it's a good thing Tom Moore isn't here.

Q. Who is Tom Moore? A. The director.

Q. The artistic director? A. He is the director of the show and that means that every decision, artistically that was frozen, was made by him because that was a director's duty.

Q. You then went back for the second act? A. Yes.

[352] Q. And did the second act continue basically in the same way the first one did? A. Yes.

Q. Did you continue taking notes? A. Yes, I did.

Q. After the curtain came down, did you have any further conversations with Maxine? A. I believe I did because we left the theatre together and we went to find Frank or Donald.

Q. Outside the theatre? A. Yes.

Q. Continue. A. Then we were going to have notes.

Pat Birch was going to give notes—

Q. Well, stop.

Did you find Frank and Donald? A. Yes.

Q. Was there any conversation between Maxine, Frank and Donald in your presence with respect to the appearance of the show? A. Yes.

Q. Who said what? A. I don't remember who said what

but the general thing was that the show was very bad and that a lot of work had to be done and that we were staying an extra [353] day.

That was decided then because there was a question as to whether or not Pat and I were going to give notes and come back the following day or whether we were going to stay and rehearse and attend to the various needs of the show.

And it was decided then that we would stay and attend to the needs of the show.

Q. Did anyone discuss the reasons for the poor appearance of the show in your presence? A. Yes.

Frank was particularly glad that I was there.

He said that he had many things that he wanted to discuss with me and we decided that we would make a time and talk.

I don't remember if we had set an exact time then or whether we said we would talk about the things later on.

Q. Was there any discussion at that time about Doucette? A. I don't believe so.

Q. In your discussion with Frank Marino that day, later that day, was there any discussion about Mr. Doucette? A. Yes, I believe there was.

[354] Q. Who said what? A. Frank was discussing—he wanted to discuss with me—he felt that he was having difficulty relating to the crew and he felt that instead of the carpenter giving him a hand and breaking him into the show, that he wasn't responding in that way.

And he felt that that was a difficulty, and he wanted me to know about it and we—when we did discuss some specific thing such as the black masking, Frank's answer at that time was that he was given the impression by the carpenter that it was okay, not to use them.

Q. Not to use what? A. The—

Q. The black masking? A. That's right.

Q. And was that one of the things that was missing in the production that you had seen that? A. Yes.

Q. That day? A. Yes.

Q. Did you discuss any of the other things that were missing from the production that day? A. Yes, we did.

Q. Tell us about those things. A. We discussed the condition of the props.

[355] We discussed the missing Edsel and I discussed with Frank the reason for the Edsel by telling him why it was designed to be used in the show.

The Edsel comes in at the end—there is a scene where the girls are at a pajama party and at the end of the scene there is a cue that hits upstage which is called the James Dean so as to get your focus on that so as not to see the pajama party leave.

And I explained to him that in order to show a different location, they drop in another panel just before the lights come up and Tom Moore was very adamant about using it and that it had to be used in every city where it could be hung.

Judge Sherman: And that panel was the Edsel panel, is that it?

The Witness: Yes.

Judge Sherman: Was any panel being dropped there instead of the Edsel panel?

The Witness: No.

Judge Sherman: Off the record.

(Discussion off the record.)

Judge Sherman: On the record.

Q. What was—what else was not in the show that you discussed? A. What else?

[356] Q. Yes. A. Just those two things, as far as the carpentry was concerned.

Q. What about the condition of the benches? A. We—

Q. When did you discuss that? A. We discussed that after the notes that we took.

We discussed that they be maintained in the future and they should work out the tie-in somes in such a way that while lights are being hung the prop department should make it their responsibility to see that those things get fixed during the tie-ins in each town.

And I also said if they felt the job was so bad, for instance, if something was ruined on a move, if it couldn't be fixed for the opening night, a call should be arranged and it should be done as soon as possible.

Q. All right.

Did you see Joe Doucette that day? A. I don't believe so.

I don't believe I saw Mr. Doucette until, it was Thursday.

Q. Were you aware of the fact that Miss Fox was under the impression that most of these problems were caused by the carpenter?

Mr. Pollack: Objection, your Honor.

[357] Judge Sherman: Sustained.

Off the record.

(Discussion off the record.)

Judge Sherman: On the record.

Q. When Mr. Doucette came back on Thursday did you talk to him? A. Yes, I did.

If it was Thursday. I'm not sure.

Q. All right.

Tell us what—where did this conversation take place?

Tell us what he said and what you said. A. If it was Thursday, it took place after the Thursday evening show.

It did take place backstage and we walked around on the set, and I asked him why we didn't have any black masking.

He said that there was a problem in hanging it the way it had been hung in Boston and I told him that I was aware of

the time problem but that I felt it could have been hung on and off and on stage the way we discussed and I believe I also asked him if it wouldn't be possible to find another way of hanging the palm trees so that they wouldn't be in the lines that were used and focused in the scene where the top tree was [358] used.

Q. Did you discuss the drop that had a crack in it? A. I don't believe so at that time but I had a list on that to discuss with Eddie Davis because I felt in my position, my opinion was that a new one should be made.

I didn't think it could be repaired and it wasn't worth discussing.

Q. Did you subsequently attend a meeting in the Waissman & Fox office on Monday after, the 23rd at about 3:00? A. Yes, I did.

Q. Will you tell us who was there? A. Mr. Waissman, Maxine Fox, Eddie Davis and myself were there.

Q. Who said what? A. Well, I can just tell you what I remember and what I remember is that we discussed the various complaints that we brought back with us from Toronto and if I recall, we did it in terms of the departments.

We discussed our dissatisfaction with the sound, with the music, with the scenery, with the scene changes.

We discussed some costume things that we felt should be repaired or replaced on a staggered basis before the LA opening.

And I gave my opinion about what I felt about [359] some of the performances where they had gone down and where I felt there was a lack of interest and care toward the show.

Q. A lack of interest and care toward the show by what personnel? A. By the cast and some of the crew and specifically I was most, at that time, disappointed with the prop department and carpentry department.

Q. What was your disappointment with the carpentry department? A. I felt that this show had been hung very quickly and without a lot of care in Toronto.

I felt it wasn't running smoothly as it could have been running.

Q. Did you hear Maxine Fox give her report as to what she had seen? A. Yes.

She would throw things in as we were talking that were repetitions of most of the things that I was covering and that she had already told on the telephone, I assume, to Ken and to Eddie Davis.

Q. Did she have any comments of her own with respect to the carpentry department? A. Yes.

She was primarily upset with the physical look [360] of the show more than the other areas.

I do recall that that was one of the things that she was particularly upset more with, the general look of the show is what she could not seem to find any excuse—no excuse seemed valid to her.

Q. She stated there was no excuse for the appearance of the show? A. I wouldn't say those were her exact words, but my feeling was that she was most upset with that.

Q. Was there any discussion in your presence with respect to the dismissal of Mr. Joseph Doucette, Sr. at that time? A. A decision to let Mr. Doucette go was not reached in my presence that day.

But the general feeling I got was that that might be something that should be considered.

Q. Well, who said what to give you that general feeling that that should be considered? A. It might possibly have been Mr. Waissman who said something about that he didn't feel—he felt the only way the show could be maintained if the crew and staff—they had to care and we had to feel we could trust them.

Q. Trust who? A. He felt that we could not trust them—

Q. Trust who? [361-365] A. Mr. Doucette.

He felt that we should consider that possibility.

That was in my presence.

But again, I will say I don't remember those exact words.

Q. All right.

Now, when you left that meeting did you leave Mr. Waissman, Miss Fox and Eddie Davis in the room at that time? A. Yes, I did.

Q. And after you left the room did they continue their meeting? A. Yes.

They said they had to discuss other things having to do with their business and they would no longer need me there.

Q. And you thereupon left? A. Yes.

* * *

[366] CROSS EXAMINATION

Q. (By Mr. Pollack) Mr. Smith, I would like to direct your attention to the time in Toronto when you were using the touring show and taking minutes.

Do you recall that in your notes you took notes about many things including the props, the scenery and the performance of the actors and actresses? A. Yes.

Q. Your notes weren't just confined to physical layout, it was the whole performance? A. Yes.

Q. And as a production stage manager, your responsibilities include the performance and the stage and the sets and the props? A. Yes.

Q. Now, you mentioned with respect to this performance in Toronto that there were costumes that weren't right and hair-dos that weren't right and perhaps some props that weren't right; correct? A. Yes.

Q. That is the responsibility of the wardrobe man, isn't it? A. Yes.

Q. And the production stage manager? A. Yes.

[367] Judge Sherman: The hair styles are the responsibility of the wardrobe man also?

The Witness: The hairdresser.

Q. The costumes would be the responsibility of the wardrobe man? A. Yes.

Q. And you mentioned that there were props that were badly patched? A. Yes.

Q. That would be the responsibility of the prop man; correct? A. Yes.

Q. And the production stage manager? A. Yes.

Q. And the benches in the park scene, that would be the responsibility of the prop man and the production stage manager? A. Correct.

Q. Now, prior to your trip to Toronto and your seeing of this matinee on April 28, had Mr. Marino notified you of the poor condition of these props and scenery? A. No, he had not.

Q. Is it part of your responsibility to be in contact with Mr. Marino with respect to the national touring company? [368] A. Yes.

Q. Now, after watching that performance in Toronto, you did go to Mr. Marino and point out to him all the defects that you found in the show? A. Correct.

Q. Did you also tell Mr. Antonelli about your dissatisfaction with the show? A. Yes.

Q. Do you recall any discussion while you were in Toronto with Mr. Antonelli about the painting of the scenery in Toronto? A. Yes.

Q. Do you recall Mr. Marino telling you that the scenery couldn't be painted until Detroit because Mr. Davis would not authorize payment until the show hit Detroit? A. No.

Q. Do you recall any discussion with respect to painting of the scenery? A. No.

Judge Sherman: Would you remember if such discussion had taken place?

The Witness: Yes.

Q. Now, you testified that there was a panel that was ripped in Boston and by the time it got to Toronto it was in much worse condition? [369] A. It was not ripped in Boston. It was a panel that we—it had to be put together so there was a seam in the middle.

By the time we got to Toronto the seam was much larger in the middle of the panel.

Judge Sherman: What was the material of the panel?

The Witness: It was wood with a large photograph pasted on it.

Q. The scene that came apart, wasn't that paper? A. Well, it was paper I imagine and also it was possible that the wood where it came together could have been damaged enroute in the trucks.

Q. And you testified that it was your belief that this should have been replaced? A. Yes.

Q. Did you tell Mr. Marino to replace it? A. No.

I told him we were going to discuss it with our general manager.

Q. You didn't have authority to authorize it to be replaced? A. No.

Q. Mr. Marino then wouldn't have that authority either, would he? A. No.

[370] Q. When you discussed the problems of the show with Mr. Marino, there was some discussion about the entire

crew, not to Mr. Doucette, was it? A. We discussed specifically Mr. Doucette in terms of certain things that weren't hung.

We discussed Mr. Doucette's son in respect to the show panels and I couldn't understand why they were slow, for two reasons:

The show had been out since December and Mr. Doucette, Jr. had been with the show since then and I assumed he would know by that point the right timing on them and I also felt that specifically in Toronto that the crew working the show had had three weeks by the time I saw it to get the hang of it.

That was my argument with Frank Marino about that.

Judge Sherman: Whom do you mean by the crew?

The Witness: The local crew because they pick up local men to do the actual pulling of the ropes to make the drops come in and out.

And I felt that they had had plenty of time by the time I saw the show.

I was watching the 19 performances in the city of Toronto and I felt that they had had enough time, plenty of time to run the show properly.

Judge Sherman: Did you discuss the work performance [371] of any of the non-acting members of the group on a permanent basis other than the Doucettes?

The Witness: Yes.

Judge Sherman: What was the discussion?

The Witness: There was discussion about policy concerning certain departments such as wardrobe and I was able to help him on some things and I told him I would have to check with the office on other things.

Judge Sherman: Did you discuss any defects that that arose in the show that these people may have been

responsible for such as the wardrobe head or the head electrician?

The Witness: Yes.

Q. And you discussed the problems with the prop man, the hairdresser, the wardrobe— A. I suggested to Mr. Marino that he try to work it out so that during the day in, usually on a tie-in you try to get your electric up into the air and you start putting your permanent structure together and many times in small theatres if you have large prop units, they can't be assembled until after the basic structure is put together.

I suggested Mr. Marino discuss using some of the early hours in the day to do the repair work as long as they had a prop crew in for the duration of the tie-in [372] time.

I was not discussing construction with him. I was discussing maintenance and repair work.

Q. Now, you mention the timing of flies.

Aren't the cues for the timing of flies given by the stage manager? A. They must be executed for the crew.

Q. Wouldn't that crew be responsible to the stage manager? A. Yes.

Judge Sherman: Assuming a fly is dropped at the proper time but not fast enough, how do you determine whose responsibility this is?

The Witness: Well, it is the stage manager's responsibility to maintain every area of the show when things are slow.

It is his responsibility to give notes to the various people who execute those shows.

Q. I would like to direct your attention to a conversation that you said you believe happened on Thursday, in Toronto, with Mr. Doucette.

Do you recall that? A. Yes, I do.

Q. Can you recall in response to some of the questions you were asked about the way the scenery was hung and the [373] way the masking was hung that Mr. Doucette mentioned that he was limited because of the limited amount of money was given to work with? A. No, I don't recall him mentioning money, but I know he said he didn't have enough time to hang it the way it was hung in Boston.

Q. Did he mention he was hired to hang the scenery in one day or something to that effect? A. I was aware of that, yes.

Q. Now, I would like to direct your attention to the meeting that you testified was on April 23 and also present were Mr. Davis, Miss Fox and Mr. Waissman.

In that meeting you didn't suggest that Mr. Doucette be fired, did you? A. No.

Q. Did you suggest that Mr. Marino be fired? A. No.

Q. Now, before you left that meeting you weren't told that Mr. Doucette would be fired, were you? A. No.

* * *

RE-DIRECT EXAMINATION

Q. (By Mr. Arnold) Did you ever give any notes to Joseph Doucette, Jr.? A. No.

[374] Q. Did you ever give any notes to Frank Marino with respect to the flyman? A. Yes.

Q. Where did you give the notes to Frank? A. The first time was in Toronto.

Q. Did Frank indicate that he had passed those notes on to the flyman? A. Yes.

Q. When did you give him those notes—did you give him those notes in Toronto in the same time frame we are talking about? A. I gave him a note after we gave notes to the cost which was between the matinee and evening performances.

Q. When did he indicate to you that he passed those notes on to Doucette, Jr.? A. The following day.

Q. When did you give notes to Frank again with respect to Doucette, Jr.? A. In Detroit.

Q. Were those the same notes? A. It was just a general note on some of the patterns that were too slow.

Q. Was that one of the problems you wanted their attention to be drawn to? A. Yes.

[375] Q. And in Detroit had it improved? A. It was better but not perfect.

* * *

THOMAS SMITH re-called.

Q. (By Mr. Arnold) When did you learn for the first time that management had decided to terminate the employment of Joseph Doucette, Sr. A. It was in Detroit on my way to London.

Q. Will you tell us the approximate date you learned [376] of this? A. I believe it was either May 23rd or May 24th.

Q. From whom did you find out that the decision had been made to discharge Mr. Doucette? A. From Mr. Marino.

Q. Will you tell us where this conversation took place and how he came to tell you? A. It took place at the hotel where the company was staying and he was going over the problem with the sound in the Detroit opening and he told me that he had talked to Mr. Waissman and that was when Mr. Waissman visited Detroit and Mr. Waissman told him that Mr. Doucette—that Mr. Davis was finding a replacement for Mr. Doucette as well as a replacement for the sound man.

Q. And that was the first time you were made aware of the fact that Mr. Doucette was going to be terminated? A. That was when I was aware it was going to be a fact.

* * *

Q. Was there a prior time that you were aware of it but not definitely aware? A. Yes.

[377] Q. Tell us about that. A. It was the meeting we had on April 23rd at the office of Waissman and Fox with Mr. Davis present.

* * *

Q. (By Mr. Pollack) The conversation you had with Mr. Marino was May 31st?. A. No, it was May 23rd.

Q. Did he tell you when Mr. Doucette was going to be terminated? A. He did not know.

He was repeating that Mr. Waissman had told him this.

Q. Did he tell you that he thought Mr. Davis was going to replace Mr. Doucette? A. He believed that he was going to replace him, yes.

* * *

Q. (By Mr. Arnold) Where did you go after you left Detroit? A. London.

Q. What date did you depart the United States? A. May 25th.

* * *

[379] Mr. Pollack: Nothing further.

I have marked as General Counsel's Exhibit 6 a two-page letter dated June 26, 1973 from Mr. Joel Arnold to a representative of the NLRB of Region 31 at a time when Mr. Arnold was acting as attorney in this matter for Theatre Now.

I think Mr. Arnold will stipulate that he sent the letter on or about that date and it bears his signature.

I want to offer the—

Mr. Arnold: I will stipulate that it was mailed by me and I did sign it.

* * *

J. Arnold, Sworn.

[381] Mr. Arnold: I wish to make the following statement under oath on the record.

The record will indicate that the original charge was dated June 18, 1973, Exhibit 1A, 1B, the notes of filing was dated June 19, 1973.

On June 18th, 1973, prior to the charge being filed or any notification of the charge, Maxine Fox, Kenneth Waissman and Eddie Davis went to England in connection with the London production of Grease.

That upon receive of the Grease, dated June 18, 1973, by their respective offices, same were forwarded to me as counsel for the company and that on June 26, 1973 when this letter was written as indicated by the next [382] to the last paragraph on page 2, all of the officers of Waissman and Fox and Eddie Davis were in London.

I knew none of the facts and none of the particulars with respect to the charge.

I did know that Mr. Doucette had been discharged. I knew he had been discharged pursuant to the terms of the written agreement which authorized his discharge without cause and at this time, to attempt to introduce this letter of mine with that statement in it with respect to—as an admission against me or against the respondents, I think is totally unfair without such a clarification and I strenuously object to this letter being offered as stated by counsel as, according to that case, as an admission against the respondents.

* * *

[383] Judge Sherman: Mr. Arnold, does Grease or Theatre still have in its employ Mr. Antonelli?

Mr. Arnold: Yes.

Judge Sherman: Mr. Marino?

Mr. Arnold: Yes.

Judge Sherman: Miss Birch?

Mr. Arnold: Miss Birch was never in the employ of Birch—of Theatre Now.

Miss Birch is an independent entrepreneur contracted to choreograph the show.

She has a contractual obligation to the Grease Company to go back and check the show when she deems fit at her pleasure if she so desires.

* * *

General Counsel's Exhibit 2.

TRAVELING STAGE EMPLOYES' CONTRACT

This is the Official and Only Contract Recognized by the

(Seal)

International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada

THIS AGREEMENT, made this 13 day of Dec, 1972, at New York City City N. Y. State, by and between (Name of Company) ....., party of the first part, AND Joseph F. Doucette, member of Local No. 381, International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada, part of the second part.

WITNESSETH: The party of the first part agrees,

To engage the party of the second part as Carpenter with (name of attraction) Grease Company at $429.00 dollars per

week, commencing on or about Dec. 14, 1972, payable weekly when due in accordance with the provisions of this contract.

To furnish sleeping car accommodation, consisting of single lower berth, when night traveling is necessary.

To recognize seven days as constituting a week, except when calculating the salary for a fraction of a week, which shall be paid for at the rate of one-sixth of the weekly contract scale for each day on which member works or travels; and to recognize that, for the purposes of this contract, the week commences on Sunday and ends on Saturday, in every case.

To recognize this contract as being in force when orders are given by the management or its representative for the collection of the scenery, properties or electrical effects for shipment to a railroad station or transportation to opening point.

To pay for services rendered in and about property prior to date set for opening under terms provided for herein.

To give in writing on the reverse side of this form two weeks' notice of the cancellation of this contract, or full salary in lieu thereof.

To give in writing on the reverse side of this form one week's notice of the closing date of the attraction, or full salary in lieu thereof.

To pay transportation from closing point to the place where member was engaged, in the event of this contract being terminated by the party of the first part.

To recognize season as closed when, after the last performance, the production is loaded on cars for transportation to storehouse; and to pay for any additional services rendered thereafter in and about property, after the loading of cars, under the terms provided herein.

To recognize this contract as being in force as long as the attraction is offered to the public, whether on the road or during the run in any city.

To pay full salary for the week before Christmas or Holy Week in case any work other than loading or unloading of cars or traveling to next stand is performed during those weeks; and to pay half salary for the week before Christmas or Holy Week in case no work other than loading or unloading of cars or traveling to next stand is performed.

To recognize the week before Christmas as being that week ending on the Saturday before Christmas Day.

To recognize Holy Week as being that week ending on the Saturday preceding Easter Sunday.

To fill any vacancy that may occur under this contract at once with a member in good standing of the I. A. T. S. E. and M. P. M. O. of U. S. and C.

To recognize a continuous lay-off of more than two weeks as constituting a termination of this contract by the party of the first part; or to pay half the contract salary for all time laid off in excess of two continuous weeks.

THE PARTY OF THE SECOND PART AGREES: To accept engagement under terms provided herein and give his exclusive service in the capacity stipulated in this contract at such theatres and places of amusement and at such times as may be required by the party of the first part; subject, however, to the provisions of this contract and the rules of the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of U. S. and C. But he may serve elsewhere if expressly permitted in writing (but not otherwise) by the party of the first part.

To give two weeks' notice in writing of the cancellation of this contract.

To pay the railroad fare of his successor to take his place in the event that this contract is terminated by the party of the second part.

To abide by the rules and regulations covering rehearsals and performances as made by the party of the first part, insofar as they do not conflict with this contract or with the By-Laws of the I. A. T. S. E. and M. P. M. O. of U. S. and C.

IT IS FURTHER MUTUALLY AGREED, That should any dispute arise under this contract (as to matters other than claims for salaries due, or drunkenness, or dishonesty, or incompetence; the latter three of which, or any of them, shall be sufficient reason for the immediate cancellation of this contract) such dispute shall be adjusted by means of an arbitration board. The arbitrators shall be: one appointed by the International Theatrical Association (not its lawyer or legal adviser), who shall be a member of the Association; one a member of the I. A. T. S. E. and M. P. M. O. of the U. S. and C., and the third, should his appointment be necessary, someone mutually agreed upon by the other arbitrators.

IN WITNESS WHEREOF, This contract is made in triplicate and the parties have affixed their signatures this 13 day of Dec, 1972.

Party of the first part THE GREASE CO.
Per J. F. D.
Permanent address 1564 B'way
NYC

Party of the second part JOSEPH F. DOUCETTE
Member of Local No. 381
Permanent address P. O. Box 48,
Newton Junction, N. H. 03859

General Counsel's Exhibit 2.

This contract shall not be valid unless the required information is inserted in all the spaces provided herein. Observe notice form on reverse side.

Immediately upon receiving notice of closing or cancellation, member shall present this form to be filled out. This written notice protects both parties to this contract. Notice of cancellation of this contract is hereby given this .... day of ....., 19.... The attraction will close the .... day of ....., 19....

..... Owner or Manager

From September 1, 1943, all employes are to receive $3.00 per day expense.

AGREED
Party of the first part .....
Party of the second part .....

ANY CHANGES IN THIS
CONTRACT WHATSOEVER,
VOID THE CONTRACT.

To contribute weekly to the IATSE National Pension Fund, Plan B, the sum of $11.20 for each week's employment of the party of the second part, or for any portion of a week (except that if a production opens on a Thursday, the contribution will be on a one-fifth pro-rata daily basis for Thursday, Friday and Saturday of that week), for coverage in accordance with the rules and regulations of such Plan B, as now in force or as hereafter amended; the party of the first part hereby agreeing to be bound by the Agreement and Declaration of Trust dated May 31, 1967, establishing the said

Pension Fund, and further agreeing to be liable for any attorney's fees and other expenses that may be incurred in collecting contributors due hereunder should there be default in payment thereof.

The pension contributions are to be transmitted weekly, with accompanying forms provided by the Pension Fund, to its offices at 250 West 57th Street, New York N. Y. 10019 (Room 1114).

THIS CONTRACT
ISSUED BY GENERAL OFFICE

General Counsel's Exhibit 3.

TRAVELING STAGE EMPLOYES' CONTRACT

This is the Official and Only Contract Recognized by the

(Seal)

International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada

THIS AGREEMENT, made this 13 day of Dec, 1972, at Boston City Mass State, by and between (Name of Company) Theatre Now, party of the first part, AND Joseph F. Doucette Jr., member of Local No. ...., International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada, party of the second part.

General Counsel's Exhibit 3.

WITNESSETH: The party of the first part agrees,

To engage the party of the second part as Flyman with (name of attraction) Grease Company at $354.00 dollars per week, commencing on or about Dec. 14, 1972, payable weekly when due in accordance with the provisions of this contract.

To furnish sleeping car accommodation, consisting of single lower berth, when night traveling is necessary.

To recognize seven days as constituting a week, except when calculating the salary for a fraction of a week, which shall be paid for at the rate of one-sixth of the weekly contract scale for each day on which member works or travels; and to recognize that, for the purposes of this contract, the week commences on Sunday and ends on Saturday, in every case.

To recognize this contract as being in force when orders are given by the management or its representative for the collection of the scenery, properties or electrical effects for shipment to a railroad station or transportation to opening point.

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General Counsel's Exhibit 3.

To recognize season as closed when, after the last performance, the production is loaded on cars for transportation to storehouse; and to pay for any additional services rendered thereafter in and about property, after the loading of cars, under the terms provided herein.

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ternational Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of U. S. and C. But he may serve elsewhere if expressly permitted in writing (but not otherwise) by the party of the first part.

To give two weeks' notice in writing of the cancellation of this contract.

To pay the railroad fare of his successor to take his place in the event that this contract is terminated by the party of the second part.

To abide by the rules and regulations covering rehearsals and performances as made by the party of the first part, insofar as they do not conflict with this contract or with the By-Laws of the I. A. T. S. E. and M. P. M. O. of U. S. and C.

IT IS FURTHER MUTUALLY AGREED, That should any dispute arise under this contract (as to matters other than claims for salaries due, or drunkenness, or dishonesty, or incompetence; the latter three of which, or any of them, shall be sufficient reason for the immediate cancellation of this contract) such dispute shall be adjusted by means of an arbitration board. The arbitrators shall be: one appointed by the International Theatrical Association (not its lawyer or legal adviser), who shall be a member of the Association; one a member of the I. A. T. S. E. and M. P. M. O. of the U. S. and C., and the third, should his appointment be necessary, someone mutually agreed upon by the other arbitrators.

IN WITNESS WHEREOF, This contract is made in triplicate and the parties have affixed their signatures this 14 day of Dec, 1972.

Party of the first part THE GREASE CO.
Per E. H. Davis
Permanent address 1564 B'way
NYC

General Counsel's Exhibit 3.

Party of the second part JOSEPH F. DOUCETTE, JR.
Member of Local No. 381
Permanent address P. O. Box 48,
Newton Junction, N. H. 03859

This contract shall not be valid unless the required information is inserted in all the spaces provided herein. Observe notice form on reverse side.

Immediately upon receiving notice of closing or cancellation, member shall present this form to be filled out. This written notice protects both parties to this contract. Notice of cancellation of this contract is hereby given this .... day of ....., 19.... The attraction will close the .... day of ....., 19....

..... Owner or Manager

From September 1, 1943, all employes are to receive $3.00 per day expense.

AGREED
Party of the first part .....
Party of the second part .....

ANY CHANGES IN THIS
CONTRACT WHATSOEVER,
VOID THE CONTRACT.

To contribute weekly to the IATSE National Pension Fund, Plan B, the sum of $11.20 for each week's employment of the party of the second part, or for any portion of a week (except that if a production opens on a Thursday, the contribution

will be on a one-fifth pro-rata daily basis for Thursday, Friday and Saturday of that week), for coverage in accordance with the rules and regulations of such Plan B, as now in force or as hereafter amended; the party of the first part hereby agreeing to be bound by the Agreement and Declaration of Trust dated May 31, 1967, establishing the said Pension Fund, and further agreeing to be liable for any attorney's fees and other expenses that may be incurred in collecting contributions due hereunder should there be default in payment thereof.

The pension contributions are to be transmitted weekly, with accompanying forms provided by the Pension Fund, to its offices at 250 West 57th Steet, New York N. Y. 10019 (Room 1114).

THIS CONTRACT
ISSUED BY GENERAL OFFICE

General Counsel's Exhibit 4.

GC 4

State of New York }
County of New York } ss: [redacted]

Edward H. Davis, being duly sworn, deposes and says:

I reside at 16 South Court, Port Washington, New York. Tel. [redacted] (Business) 581-5330.

I am employed as Vice-President of Theatre Now, Inc., 1501 Broadway, New York, New York. Theatre Now, Inc. is employed by The Grease Company, a New York limited partnership at 1564 Broadway, New York, New York, as the general manager of its two productions of the musical ~~play~~ "Grease". ("Grease" production based in New York, and the other is the "Grease" production road production, now located in Los Angeles,

General Counsel's Exhibit 4.

(1)

California). The general partners of the Grease Company are Weissman and Fox, Inc., a New York Corporation and Kenneth Waissman, both located at 1564 Broadway, New York, New York. The Grease Company owns all of the first class production rights to the musical show entitled "Grease", and is the Producer of the New York and road show productions of "Grease".

As General Manager, Theatre Now, Inc., AMONGST OTHER DUTIES IS responsible for hiring and firing of all employees of the Grease Company, and is authorized to sign employment contracts with all employees on behalf of the

General Counsel's Exhibit 4. (3)

Grease Company. In effect, Theatre Now, Inc. is the agent for its principle ~~the~~ Grease Company. Neither Waissman and Fox, Inc. nor Kenneth Vauman nor Maxine Fox have any legal interest (financial or otherwise) in Theatre Now, Inc, and vice versa.

Edward H. Davis owns one-quarter of one percent of the net profits of the limited partnership, namely The Grease Company.

Thus as to the instant charge, 31-CA-3825, the true employer is the Grease Company. (There is no such legal entity as The National Grease ~~Wiz~~ Company; it is only an expression referring to the road production),

General Counsel's Exhibit 4.

(5)

As to gross revenues, for a twelve month representative period, gross revenues of The Grease Company exceeded $500,000 (includes "road" show and the New York production).

I made the decision to discharge Joseph F. Doucette, Jr. and Joseph F. Doucette. In mid-May, I came to the conclusion that it would be to the best interests of the Grease Company to terminate the employment of both Doucettes. I, at this time, discussed this conclusion with Kenneth Waissman and Maxine Fox and the three of us agreed to terminate their employment as soon as replacements could be found and at

General Counsel's Exhibit 4. (6)

a time that the Company would not suffer, namely after the Los Angeles opening. (In mid-May the road show was in Detroit, Michigan.)

The reasons (6a) for their discharge was my general dissatisfaction with the manner in which they performed their duties, and was not in any way because of their membership or activities on behalf of any union. To my knowledge, neither of them at any time, while in the employ of the Grease Company, engaged in any union activities.

Before terminating their employment, I personally telephoned

General Counsel's Exhibit 4.

Walter Diehl, Business Agent for IATSE, and informed him (a Friday, June 15, 1973) that I intended to discharge the Doucette's. Mr. Diehl told me that was my right. That was the extent of our conversation, because I had discussed the Doucette's with Diehl on a previous occasion, but took no affirmative action at that time. ~~but I do not wish to discuss that matter any further.~~

As to D. Antonelli, ~~[illegible]~~ he is employed as the Company Manager for the Grease Company, for the road show. He reports directly to me or to Waisman and Fox, Jr., if they so desire. He has the full authority to direct employee in the performance of their day-to-day

(8)

General Counsel's Exhibit 4.

work activities, and conducts all day-to-day business affairs, such as disbursing and receiving monies, without prior approval from myself or anyone else in New York.

As to Frank Marino, employed by us for ~~the past~~ 3 (4) months, he is the Production Stage Manager and reports directly to me and is responsible for all activites "behind the footlights", i.e. the "foreman" for employees working on or "backstage". He has authority to grant time-off to employees without consulting myself or anyone else, and can make ~~small~~ (4) day-to-day expenditures himself, for production needs.

General Counsel's Exhibit 4.

I did have a conversation with Doucette, Sr., shortly after his discharge and I did enumerate to him the reasons for his discharge. I can only say that I was unhappy with his performance and gave him some specific instances.

I was aware of the fact that Doucette, Senior, had interceded on behalf of a discharged employee, Robert Weeden. I had discussed Doucette's involvement with him after learning about it from Walter Diehl, about three weeks prior to Doucette's discharge. I have read this written

GC 5

General Counsel's Exhibit 5.

"GREASE" NATIONAL COMPANY PROJECTED TOUR

DECEMBER 23 -JANUARY 6	BOSTON	SHUBERT THEATRE
JANUARY 8 - JANUARY 20	PHILADELPHIA	FORREST THEATRE
JANUARY 22 - JANUARY 27	NEW HAVEN	SHUBERT THEATRE
JANUARY 29- FEBRUARY 10	BALTIMORE	MECHANIC THEATRE
FEBRUARY 12 - FEBRUARY 17	PITTSBURGH	NIXON THEATRE
FEBRUARY 19 - FEBRUARY 24	COLUMBUS	OHIO THEATRE
FEBRUARY 26 - MARCH 3	INDIANAPOLIS	CLOWES AUDITORIUM
MARCH 5 - MARCH 24	WASHINGTON	NATIONAL THEATRE
MARCH 26 - MARCH 31	CLEVELAND	HANNA THEATRE
APRIL 2 - APRIL 21	TORONTO	ROYAL THEATRE
APRIL 23 - MAY 26	DETROIT	FISHER THEATRE
MAY 28 - JUNE 2	CINCINNATTI	SHUBERT THEATRE
JUNE 5 - JUNE 10	DENVER	AUDITORIUM THEATRE
JUNE 12- ~~JUNE 24~~	~~SAN FRANCISCO~~	~~GEARY THEATRE~~
JUNE 26 - OPEN END	LOS ANGELES	

General Counsel's Exhibit 4. (10)

page statement and it is true to the best of my knowledge and belief.

X [signature]

Subscribed and sworn to before me this 12th day of July, 1973.

Robert D. Fowler NLRB Agent

I would like to add that Doucette's interest in the Weeden discharge (2) had absolutely no bearing whatsoever on my decision to terminate both Doucettes. The younger Doucette was totally incompetent and I kept him on only so long as his father worked for us. Had it not been for his father, he would have been terminated long ago.

[signature]

General Counsel's Exhibit 6.

LAW OFFICES
BLUMENTHAL, BARANDES, BASS,
MATSON & ARNOLD
18 East 48th Street, New York, N. Y. 10017

(212) 421-7070
Cable Address: Mosslaw

Ronald J. Moss
Counsel

June 26, 1973

Marvin Rothbloom, Esq.
National Labor Relations Board
Region 31
11000 Wilshire Blvd., 12th Floor
Los Angeles, Calif. 90024

Re: THEATRE NOW
Case No. 31-CA-3825

Dear Mr. Rothbloom:

This letter shall confirm our telephone conversation of this date.

We are in receipt of your letter of June 19, 1973 and enclosures with reference to the captioned matter. We enclose herewith, Notice of Designation, Notice of Appearance, and Commerce Questionnaire Form.

Supplementing these documents, we wish to advise you as follows:

The proper party to this proceeding should be The Grease Company, a Limited Partnership formed and existing pursuant to the laws of the State of New York.

General Counsel's Exhibit 6.

The Grease Company is a Limited Partnership consisting of numerous limited partners and two (2) general partners, namely: Waissman & Fox, Inc. and Kenneth Waissman. This partnership was formed specifically to exploit the rights to the musical comedy entitled "GREASE." It initially produced the show in New York City, and while the New York company production was still running, the Partnership put together a National Touring Company which is presently playing in Los Angeles. The Partnership engaged the services of Theatre Now, Inc., a New York Corporation, having its principal offices at 1501 Broadway, New York, New York, as its General Manager for both the New York and Touring productions. The Company Manager for the Touring Production is Mr. Donald Antonelli. The chain of command runs from the (Producers, General Partners—Waissman & Fox, Inc.—Kenneth Waissman) to the General Manager (Theatre-Now, Inc.—Edward H. Davis, Vice-Pres), to the Company Manager.

The two (2) complaining employees were hired for the Touring Company, I believe in Cincinnati, Ohio and toured with the company pursuant to their written contract with the Producer. The employees were discharged without cause in California, were paid two (2) weeks salary and furnished transportation as per their contracts.

We call your attention to the provision of the written agreements, both dated December 13, 1972, wherein the employer had the right to terminate the agreement on

> "two (2) weeks notice of the cancellation of this contract or full salary in lieu thereof"

In response to your oral inquiry, we must emphatically state that these two employees were dismissed without cause.

General Counsel's Exhibit 6.

As stated to you on the telephone, the employer did have suspicion of wrong doing on the part of each employee, but there is absolutely no credible evidence which can be offered in support of this suspicion. The employer and its agents categorically and affirmatively stated that these employees were not discharged "because of their membership and activities" in any union.

All of the officers of Waissman Fox, Inc., Kenneth Waissman and Edward H. Davis, are presently in London, England and will not return until after July 9th. On behalf of the employer we agree to submit any or all of these persons having knowledge of the facts for your inquiry here in New York after their return. If Mr. Davis plans to be in California in the near future, we shall be happy to submit him for inquiry in Los Angeles, but will be unable to give you his schedule until after July 9th.

If any further information is required, please do not hesitate to call upon the undersigned.

Very truly yours,

BLUMENTHAL, BARANDES, BASS,
MATSON & ARNOLD
JOEL ARNOLD
Joel Arnold

JA/tk
encls.

Traveling heads of departments must designate IN INK in columns below the number of local men required to handle their production, and no work is to be [illegible] has been furnished. If for any cause a different number are used, [illegible] be given in space provided below for remarks, but figures in colu[illegible] altered unless show is permanently cut or augmented

DEPARTMENT	EN TOUR	TAKE IN	PERFORM-ANCE	PUT OUT	SIGNATURES OF DEPARTMENT HEADS	
CARPENTER	1	12	3	12	[signature]	
ELECTRICAL	4	12	2	12	[signature]	
PROPERTY	2	4	3	4		
M. P. M. O.						
WARDROBE	1	1		1	Colin Ferguson	7:24

To Load Cars [ ] To Unload Cars [ ]

Remarks [illegible]

JUDGES EX. 1 FOR I.D. 9/19/73

272

Judges Ex. 1 & 2

Judges Ex. 1 & 2

COMPANY OR ACT

OWNER

PLAYED AT NATIONAL THEATRE

CITY WASH STATE DC

DATE OPENED MAR-5 1973 DATE CLOSED MAR 24

ROUTE — AT LEAST ONE WEEK IN ADVANCE	DATE

Local
Forward
to General Office

SIGNED

11 REPRESENTING LOCAL No.

TO BE DETACHED BY LOCAL REPRESENTATIVE AND FORWARDED TO I. A. OFFICE AT ONCE.

PRINTED IN U. S. A.

The Batavia Times Publishing Co., Batavia, N. Y. 14020
(1-1-75-20)

Traveling heads of departments must designate IN INK in columns below the number of local men required to handle their production, and no work is to be done until same has been furnished. If for any cause a different number are used, an explanation must be given in space provided below for remarks, but figures in columns should not be altered unless show is permanently cut or augmented.

DEPARTMENT	SHIFT	TAKE IN	PERFORMANCE	PUT OUT	SIGNATURES OF DEPARTMENT HEADS	LOCAL NO.
CARPENTER		12	12	12	[illegible]	361
ELECTRICAL	1	12	2	12	[illegible]	73
PROPERTY	1	4	4	4	[illegible]	44
M. P. M. O.						
WARDROBE	1	1	1	1	Colin Ferguson	764

To Load Cars [ ] To Unload Cars [ ]

Remarks: Colin Ferguson

[illegible] 10AM MCN

[illegible] EX. 2 FOR ID. 9/19/73

274

Judges Ex. 1 & 2

BEST COPY AVAILABLE

Judges Ex. 1 & 2

GREASE CO — COMPANY OR ACT

THEATRE ACCT — OWNER

PLAYED AT SHUBERT — THEATRE

CITY NEW HAVEN — STATE CONN

DATE OPENED June 22 19 23 — DATE CLOSED [illegible]

ROUTE — AT LEAST ONE WEEK IN ADVANCE	DATE
NEW HAVEN	9-29

Local Forward to General Office

SIGNED [illegible]

41 REPRESENTING LOCAL No. [illegible]

TO BE DETACHED BY LOCAL REPRESENTATIVE AND FORWARDED TO I. A. OFFICE AT ONCE.

PRINTED IN U. S. A.

Decision and Order.

UNITED STATES OF AMERICA

Before the National Labor Relations Board

THEATRE NOW, INC., AND THE GREASE COMPANY,

and

JOSEPH F. DOUCETTE, SR.

Case 31—CA-3825.

On November 30, 1973, Administrative Law Judge Nancy M. Sherman issued the attached Decision in this proceeding. Thereafter, General Counsel filed exceptions and a supporting brief, and Respondent filed exceptions, a supporting brief, an answering brief to General Counsel's exceptions, and a motion to reopen the record.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided

---

[1] Respondent's motion to reopen the record, in our opinion, raises no material or substantial issues relevant to the proceedings herein. Accordingly, we hereby deny such motion.

to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

1. The Administrative Law Judge found that Doucette, Sr., was a supervisor and that he was discharged for participating in the Union's processing of an employee's grievance. The conclusion that Doucette, Sr., possessed supervisory authority was based on the finding that (a) he had authority effectively to recommend hiring, (b) he participated in the hiring of the local carpenters, and (c) he possessed the authority to direct the employees in the carpentry department. Although we accept the finding of the Administrative Law Judge that Doucette, Sr., was terminated for the participation in the grievance, we find that he was a rank-and-file employee at all times.

With respect to the finding of the Administrative Law Judge that Doucette, Sr., had authority to effectively recommend hiring, we note that the hiring of the flyman is the only instance in which the recommendation of Doucette, Sr., played a role. Particularly noteworthy, however, is the fact that the man Doucette, Sr., successfully recommended for the position of flyman was his son, Doucette, Jr. We attribute this isolated incident only to the Employer's willingness to permit Doucette, Sr., to name his son to assist him, not as an example of a supervisor's power of "effective recommendation." Moreover, it appears that the carpenter and his assistant (the flyman) function as a team and the Employer may have been willing to allow Doucette, Sr., to name his son so as to ensure harmony within the team.

Secondly, with respect to the hiring of the local carpenters, we note that Doucette, Sr., performed only the mechanical task of submitting to the local union a card containing the number of employees needed to work the show and the num-

ber of employees traveling with the show. The local union then supplied the needed employees based on this information. We consider the participation by Doucette, Sr., in this hiring process to be so minimal and so devoid of independent judgment as to negate any conclusion that Doucette, Sr. exhibited supervisory authority by his role in obtaining additional employees from the local union.

Thirdly, we find that the record does not support the finding by the Administrative Law Judge that Doucette, Sr., exercised supervisory authority in the direction of employees. Any direction or instruction by Doucette, Sr., is attributable essentially to his familiarity with the operation of the show. The job function of Doucette, Sr., was to adapt the set of the production to each theatre. This required him to explain to other employees how the stage should be set for this particular play, but did not require actual supervision or direction of stagehands as they performed their jobs in achieving this objective.

Considering the foregoing together with the facts that there is no evidence that the employer or any employee or union representative considered or held out Doucette, Sr., to be a supervisor, and the employer conceded at the hearing that Doucette, Sr., did not exercise supervisory authority, we find that he was not a supervisor within the meaning of Section 2(11) of the Act. Accordingly, we find that the Respondent violated Section 8(a)(1) and (3) of the Act by terminating an employee, Doucette, Sr., for participating in a grievance.[2]

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[2] In view of the finding that Doucette, Sr., was not a supervisor, Members Jenkins and Penello deem it unnecessary to consider the finding and rationale of the Administrative Law Judge with regard to the violation of Sec. 8(a)(1) of the Act. Member Fanning would find, in any event, that both Doucette, Sr., and Doucette, Jr., should be reinstated for the reasons articulated by the Administrative Law Judge in her Decision.

Since Doucette, Jr., was also discharged, apparently as part and parcel of the discharge of his father, we shall order his reinstatement. The termination of Doucette, Jr., was directly linked to the unlawful termination of Doucette, Sr., for participation in a protected activity. Accordingly, we find that Respondent violated Section 8(a)(1) and (3) of the Act by this action.

Remedy.

Inasmuch as we agree with the Administrative Law Judge that Respondents violated the Act by terminating Joseph Doucette, Sr., and Joseph Doucette, Jr., we shall adopt as our remedy the remedy recommended by the Administrative Law Judge. However, since we do not find that Doucette, Sr., was a supervisor, we shall delete from our Order that part of the Administrative Law Judge's Order requiring Respondents to cease and desist from discharging or taking adverse action against the supervisor.

Amended Conclusions of Law.

1. Delete Conclusions of Law 5 and 10 and renumber accordingly.

2. Reword Conclusion of Law 6 to read:

"By discharging Joseph F. Doucette, Sr., under circumstances constituting interference with and restraint and coercion of employees in the exercise of their statutory rights, Respondents have violated Section 8(a)(1) of the Act and have discriminated in regard to tenure of employment to discourage membership in a labor organization in violation of Section 8(a)(3)."

ORDER.

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. Respondent, The Grease Company, Los Angeles, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise taking adverse action against any employee, where such action interferes with, restraints, or coerces employees in the exercise of their rights under Section 7 of the Act.

(b) Discouraging membership in International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 381 of that organization, or any other labor organization, by discharge or any other discrimination in regard to hire or tenure of employment or any term or condition of employment.

(c) Stating the reasons for discharges which were violative of the Act, under circumstances where such statements are likely to be relayed to employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action:

Offer Joseph F. Doucette, Sr., and Joseph F. Doucette, Jr., reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, and make them whole for any loss of pay suffered by reason of their discharge in the manner set forth in the section of the Administrative Law Judge's Decision entitled "The Remedy."

B. Respondent, Theatre Now, Inc., Los Angeles, California, its officers, agents, successors, and assigns, shall:

1. In connection with the show *Grease,* or any other show where Edward H. Davis is employed, cease and desist from:

(a) Discharging or otherwise taking adverse action against any employee, where such action interferes with, restrains, or coerces employees in the exercise of their rights under Section 7 of the Act.

(b) Discouraging membership in International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 381 of that organization, or any other labor organization, by discharge or any other discrimination in regard to hire or tenure of employment or any term or condition of employment.

(c) Stating the reasons for discharges which were violative of the Act, under circumstances where such statements are likely to be relayed to employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action:

Make a written request to Respondent The Grease Company to offer Joseph F. Doucette, Sr., and Joseph F. Doucette, Jr., reinstatement to their former jobs; provide the Doucettes with a copy of that request; and make them whole for any loss of pay suffered by reason of their discharge in the manner set forth in the section of the Administrative Law Judge's Decision entitled "The Remedy."

C. Respondent Theatre Now, Inc., and Respondent The Grease Company, Los Angeles, California, their officers, agents, successors, and assigns, shall:

(a) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(b) Post at their offices and places of business, and in the theater or theaters where they, or either of them, are putting on the musical comedy *Grease,* copies of the attached notice marked "Appendix."[3] Copies of said notice on forms provided by the Regional Director for Region 31, after being duly signed by representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

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[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Appendix attached to Decision and Order.

(c) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C. JUN 13 1974.

. . . . . ,
JOHN H. FANNING, Member

. . . . . ,
HOWARD JENKINS, JR., Member

. . . . . ,
JOHN A. PENELLO, Member
(Seal) NATIONAL LABOR RELATIONS BOARD.

APPENDIX

NOTICE TO EMPLOYEES.

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a trial in which all parties had the opportunity to present their evidence, it has been decided that we violated the law by firing employees Joseph F. Doucette, Sr., and Joseph F. Doucette, Jr., under circumstances which would lead employees to believe that they too would be discharged if they or their kin engaged in grievance or other union activity. We have been ordered to post this notice. We intend to carry out the order of the Board and abide by the following:

Appendix attached to Decision and Order.

WE WILL NOT fire any employee under circumstances which would lead our employees to believe that they too will be discharged if they or their kin engage in grievance or other union or protected concerted activity.

WE WILL NOT convey the message to employees that employees have been discharged for this reason.

Theatre Now, Inc., will ask The Grease Company to reinstate, and The Grease Company will offer to reinstate, Joseph F. Doucette, Sr., and Joseph F. Doucette, Jr.

WE WILL make Joseph F. Doucette, Sr., and Joseph F. Doucette, Jr., whole for loss of pay, with interest, owing to their discharge.

Our employees are free to join or assist International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada and its Local 381, or any other union, including participation in grievance proceedings, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection. Our employees are free to refrain from any or all such activities except to the extent that their rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the National Labor Relations Act.

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of these rights.

THE GREASE COMPANY,
(Employer)

Dated ..... By .....
(Representative) (Title)

THEATRE NOW, INC.,
(Employer)

Dated ..... By .....
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 12100, 11000 Wilshire Boulevard, Los Angeles, California 90024, Telephone 213-824-7351.

ADDITIONAL EVIDENCE

The following record materials relate to the Board's supplemental hearing on the Company's additional evidence, pursuant to the Court's December 3, 1974 order.

Chronological List of Relevant Docket Entries

In the Matter of:
The Grease Company and Theatre Now, Inc.

Case No: 31-CA-3825

6.18.73	Charge filed
7.26.73	Complaint and Notice of Hearing, dated
8. 1.73	First Amended Charge, filed
8. 6.73	Respondent's Answer to Complaint, dated
8. 6.73	Amended Complaint and Notice of Hearing, dated
8.28.73	Respondents' Answer to the Amended Complaint, dated
8.29.73	Teletype rescheduling hearing, dated
9. 6.73	Teletype resetting hearing, dated
9.19.73	Hearing opened
9.20.73	Hearing closed
11.30.73	Administrative Law Judge's Decision, issued
12.18.73	Respondents' Motion to Reopen the Record, dated
12.26.73	General Counsel's Telegram opposing Respondent's Motion to Reopen the Record, dated
1. 4.74	General Counsel's Exceptions to the Decision of the Administrative Law Judge received
1. 7.74	Respondents' Exceptions to the Decision of the Administrative Law Judge received
6.13.74	Board's Decision and Order, dated
9. 5.75	Administrative Law Judge's Supplemental Decision, issued
10. 8.75	Respondent's Exception to the Administrative Law Judge's Supplemental Decision, received

12.10.75 Board's Supplemental Decision and Order on Remand, dated

---

Supplemental Decision and Order on Remand.

FJP
D—708
221NLRB No. 182 Los Angeles, Calif.

UNITED STATES OF AMERICA
Before the National Labor Relations Board

THEATRE NOW, INC. AND THE GREASE COMPANY,

and

JOSEPH F. DOUCETTE, SR.

Case 31—CA—3825

On November 30, 1973, Administrative Law Judge Nancy M. Sherman issued a Decision in this proceeding. On June 13, 1974, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding[1] finding that Respondent had engaged in certain unfair labor practices in violaton of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, and ordering Respondent to take specific action to remedy such unfair labor practices.

Thereafter, on October 29, 1974, the Board applied to the United States Court of Appeals for the Second Circuit for en-

[1] 211 NLRB No. 58.

forcement of its Order. Subsequently, Respondent filed a motion to remand this action to the National Labor Relations Board for the purpose of taking additional evidence to be made part of the record. On December 3, 1974, the court granted this motion.

On March 18, 1975, the Board ordered that the record in this proceeding be reopened, that a further hearing be held before Administrative Law Judge Nancy M. Sherman limited to the matters raised by the testimony of Frank Marino and Donald Antonelli, that the proceeding be remanded to the Regional Director for Region 31 for the purpose of arranging such further hearing, that the Regional Director be authorized to issue a notice thereof, and that, upon the conclusion of such further hearing, the Administrative Law Judge shall prepare and serve on the parties a Supplemental Decision containing findings of fact upon the evidence received, conclusions of law, and recommendations.

On September 5, 1975, Administrative Law Judge Nancy M. Sherman issued the attached Supplemental Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions of the Ad-

[2] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing her findings.

ministrative Law Judge and to adopt her recommended Order.

ORDER.

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondents comply with the Board's Order issued on June 13, 1974.

Dated, Washington, D.C., Dec 10 1975.

. . . . . ,
JOHN H. FANNING, Member.

. . . . . ,
HOWARD JENKINS, JR., Member.

. . . . . ,
JOHN A. PENELLO, Member.

(Seal) NATIONAL LABOR RELATIONS BOARD.

Supplemental Decision.

JD-481-75
Los Angeles, Calif.

UNITED STATES OF AMERICA
Before the National Labor Relations Board
Division of Judges
Washington, D.C.

THEATRE NOW, INC. and
THE GREASE COMPANY,

and

JOSEPH F. DOUCETTE, SR.

Case No. 31-CA-3825

Jay R. Pollack, Esq., of Los Angeles, Calif., for the General Counsel.

Richard Adelman, Esq., of New York, N.Y., and *Joel Arnold, Esq.*, of New York, N.Y., for Respondents.

I. PROCEDURAL STATEMENT.

On November 30, 1973, I issued my first Decision in this case. I found, *inter alia*, (1) that Joseph F. Doucette, Sr. ("Doucette" or "Doucette, Sr.") was discharged because of his participation in the processing in Cincinnati, Ohio, of a grievance by International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada ("the Union") on behalf of employee Weeden; (2) that Joseph F. Doucette, Jr., ("Doucette, Jr.") was discharged because he was Doucette, Sr.'s, son; (3) that

Doucette, Sr., was a supervisor within the meaning of Section 2(11) of the National Labor Relations Act, as amended ("the Act"); (4) that Doucette, Sr.'s discharge violated Section 8(a)(1) of the Act; (5) that Doucette, Jr.'s discharge violated Section 8(a)(1) and (3); (6) that Section 8(a)(1) was violated when Doucette, Sr., was told that the Doucettes were discharged for the reasons found, because that statement was made under circumstances which would lead management to anticipate that it would be relayed to employee Doucette, Jr.; and (7) that Respondents occupied joint-employer status for purposes of this case.

Thereafter, Respondents and counsel for the General Counsel ("the General Counsel") filed exceptions, some of which are summarized below. In addition, Respondents filed a motion (dated December 18, 1973) to reopen the record to receive the testimony of Frank Marino, Donald Antonelli, Patricia Birch, and Tom Moore. Respondents' counsel averred, *inter alia;*

> 2. . . . Respondents seek to reopen the record with respect to the finding that Joseph F. Doucette, Sr. was discharged for participating in union grievance meetings in violation of Section 8(a)(1) of the Act, which resulted in the finding of other violations as well.
>
> 3. At the hearing, respondents produced four witnesses who testified that the decision to discharge Doucette was made prior to the time Doucette engaged in the alleged protected activity. However, Judge Sherman rejected this uncontroverted testimony substantially because respondents failed to call other witnesses. Judge Sherman, on the basis of this failure to call additional witnesses, inferred that had these witnesses been called they would have testified adversely to the respondents and made numerous credibility findings based on this inference.

(See, e.g. footnotes, 10, 11, 13, 14, 16, 17, 20, 21, and 22 of the decision).

4. The witnesses, company manager Donald Antonelli, production stage manager Frank Marino, director Tom Moore and choreographer Patricia Birch, were not called to testify because their testimony was merely cumulative and repetitive. If the record was reopened and they were permitted to testify, Antonelli, Marino, Moore and Miss Birch would all state that they were informed of the decision to terminate Doucette before May 29, 1973, when Doucette participated in the union grievance meetings.

5. Since it is obvious that the Administrative Law Judge's decision is largely dependent on the inference that these witnesses would testify adversely to respondents, it is only equitable and just that the record be reopened to permit this testimony to be heard.[1]

On June 13, 1974, the Board issued its Decision, 211 NLRB No. 58. The Board stated, *inter alia,* that Respondents' "motion to reopen the record, in our opinion, raises no material or substantial issues relevant to the proceedings herein. Accordingly, we hereby deny such motion" (p. 1, fn. 1). The Board rejected my finding (3) that Doucette, Sr., was a supervisor, and, therefore, modified my finding (4) by holding that Doucette, Sr.'s discharge violated both Section 8(a)(1) and (3). The Board adopted the rest of my findings summarized above.

Thereafter, the Board filed a petition to enforce the Board's order in the United States Court of Appeals for the

[1] Moore's name was not mentioned in my Decision. My Decision further stated (p. 11, 11. 24-26, fn. 9), "In view of the statement by Respondents' counsel that Miss Birch is an independent entrepreneur, I draw no inference from her failure to testify."

Second Circuit. Respondents thereupon applied to that Court for an order that additional evidence be taken before the Board. Respondents averred, *inter alia:*

> 2. On November 30, 1973, Judge Sherman issued a decision finding that the respondents violated Section 8(a)(1) and (3) of the Act. Specifically, Judge Sherman concluded that Joseph F. Doucette, Sr., was discharged for participating in union grievance meetings. Based on this finding alone Judge Sherman concluded that respondents violated Sections 8(a)(1) and (3) of the Act.
>
> 3. At the hearing, respondents produced four witnesses who testified that the decision to discharge Doucette was made prior to the time Doucette engaged in the alleged protected activity. However, Judge Sherman rejected this uncontroverted testimony substantially because respondents failed to call Donald Antonelli and Frank Marino as witnesses. Judge Sherman, on the basis of this failure to call these additional witnesses, inferred that had these witnesses been called they would have testified adversely to the respondents and made numerous credibility findings based on this inference. (See, e.g., footnotes 10, 11, 13, 14, 16, 17, 20, 21 and 22 of the decision).
>
> * * *
>
> 5. If further evidence was allowed to be taken, the witnesses Antonelli and Marino, as their attached affidavits demonstrate, would testify that they were informed of the decision to terminate Doucette, Sr., before May 29, 1973, the date Doucette, Sr., participated in the union grievance meetings and that his participation in those union grievance meetings had nothing to do with his discharge.

6. Antonelli and Marino were not called to testify because their testimony was merely cumulative and repetitive, and because of the expense and difficulty in bringing them to New York from Chicago where the show was running, as the affidavit of Joel Arnold, the attorney who tried the case, states.

7. Since the decision of the Board is based on the credibility resolutions of the Administrative Law Judge and since it is obvious that the Administrative Law Judge's credibility resolutions and decision [are] largely dependent on the inference that these witnesses would testify adversely to respondents, it is only equitable and just that an order be issued to permit the testimony of Antonelli and Marino be heard before the Board and be made a part of the record.

Respondents' motion to the Court of Appeals did not refer to Moore and Birch. Respondents attached to that motion purported affidavits by Antonelli and Marino. The purported Antonelli affidavit, which is undated and bears the seal of Respondents' counsel Joel Arnold as notary public, stated, *inter alia,* "I knew, prior to the Cincinnati incident with 'Weeden,' that Doucette, Sr. was to be discharged. I also know of my own knowledge that the Cincinnati incident had absolutely nothing whatsoever to do with Doucette's discharge." The purported Marino affidavit (dated November 14, 1974, after the Board filed its petition for enforcement) stated, *inter alia,* " . . . I was told by [producer Kenneth] Waissman in Detroit (prior to Cincinnati) that Doucette was going to be discharged and . . . I knew for a fact that the 'Weeden' incident had nothing whatsoever to do with Doucette's discharge." Also attached was an affidavit by Joel Arnold, Respondents' sole trial counsel at the initial hearing, which affidavit was likewise dated November 14, 1974, and stated, *inter alia;*

> . . . At [the September 1973] hearing I offered evidence from Kenneth Waissman, [producer] Maxine Fox, [general manager] Edward H. Davis, and [production supervisor] Tommy Smith, to the fact that the decision to discharge Mr. Doucette was arrived at by management long before the incident in Cincinnati in which he interceded on behalf of a fellow employee [sic].
>
> At the time of the hearing [in New York, New York], Mr. Frank Marino and Mr. Donald Antonelli were employed by The Grease Company as Production Stage Manager and Company Manager, respectively, in Chicago, Illinois and I felt that their testimony which was merely cumulative and repetitive, was not necessary in view of the great expense and difficulty of bringing both of them in from Chicago while the show was running.

Board counsel filed an opposition to this motion, which, however, was granted by the Court of Appeals on December 3, 1974. Thereafter, on March 18, 1975, the Board reopened the [illegible]1, directed a hearing before me "limited to the matters raised by Marino's and Antonelli's testimony," and ordered me to prepare a Supplemental Decision containing findings of fact upon the evidence received, conclusions of law, and recommendations.[2]

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[2] In view of the limited nature of the remand, I believe it beyond my province formally to recommend an adjustment of Paragraphs A(1)(c) and B(1)(c) of the Board's order, the first two paragraphs of the Notice, and my eighth Conclusion of Law, to reflect more fully the Board's finding that in reciting to Doucette, Sr., the reasons for the Doucettes' discharge, general manager Davis was addressing an employee.

However, notwithstanding such procedural constraints, I would like to note the following errors in my original Decision: "Vignale" should be substituted for "Marino" on p. 17, l. 3. The citation to "*Steve Aloi Ford*" on p.

(Footnote continued on following page)

Supplemental Decision.

The hearing was held before me on May 2, 1975. Upon the entire record,[3] including the record of the October 1973 hearing and the demeanor of all the witnesses who testified in October 1973 and May 1975, and after due consideration of the briefs filed by Respondents and counsel for the General Counsel ("the General Counsel"), I make the following:

II. FINDINGS OF FACT DERIVED IN WHOLE OR IN PART FROM THE EVIDENCE RECEIVED IN MAY 1975

A. Facts Allegedly Relevant to the Motivation for the Discharges

At the first hearing before me, Respondents' witnesses Davis, the Waissmans, and to some extent Smith testified that the decision to discharge Doucette, Sr., was made by the Waissmans between April 18 and 23, 1973,[4] before Doucette,

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(Footnote continued from preceding page)

24, 1. 48, should be 179 NLRB 229, 230. The words "answer to the amended" should be inserted before the word "complaint" on p. 35, 1. 3. Footnote 41 on p. 30 inaccurately describes the Court's holding in *Food Store Employees Union, Local 347, Amalgamated Meat Cutters* v. *N.L.R.B., (Heck's, Inc.)*, 418 F. 2d 1177, 1181 (C.A.D.C.). The Court said:

> As for White, the Board's conclusion that she was *not* a "supervisor" seems amply supported by the record. In any event, . . . the Company never indicated that it was limiting its coercive tactics to supervisors, and it in fact knew that White was a union member. The Company's conduct [in discharging her] can therefore be viewed as a violation of Section 8(a)(1) even if one assumes employee White was a front-line supervisor, simply because of the Company's awareness that she would most likely pass on the threats made to her to her fellow union employees with whom she had a close working relationship. [Emphasis on original.]

[3] Respondents' unopposed request that the record be corrected in certain respects is hereby granted, except for the requested change on page 449. In addition, page 391, line 1, is corrected by substituting the word "after" for the word "before."

[4] All dates hereinafter are 1973 unless otherwise stated.

Sr., engaged in the grievance activity which, according to the General Counsel, motivated his discharge. According to these witnesses, this discharge decision was motivated by the poor condition of the show in Toronto on April 18. Similarly, Respondents' November 1973 brief to me alleged that the discharge decision was made on April 18, and at least partly for this reason (p. 3), and their brief to the Board alleged that the decision was made for this reason on April 23 in Toronto (p. 6). I discredited this testimony, and found instead that the discharge decision was made by Davis after Doucette's participation in the grievance proceeding on May 29 and 30.[5]

1. Marino's testimony

A. Events in connection with the Toronto show

(1) The Edsel panel

In the first hearing before me, producer Maxine Fox and production supervisor Thomas Smith testified that at the

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[5] In this connection, I found, *inter alia*, that Davis "testified that he had never told Doucette that the producers were dissatisfied with his work" (p. 20, ll. 45-47, fn. 23). Respondents excepted to this finding on the ground that I was "using testimony regarding occurrences in April" (Exception 5). Davis testified as follows:

> Q. [By Mr. Pollack] Did you, in April of 1973, give Mr. Doucette a warning that the producers of the show wanted to fire him if he didn't improve the quality of his work or anything to that effect?
>
> A. I don't recall doing that.
>
> Q. In other words, you never did that, you didn't tell him they were dissatisfied with his work?
>
> A. No. They told him there. They were on the spot and they were telling him of their dissatisfaction.
>
> Q. You weren't present at that time?
>
> A. I was in New York. They were in Toronto.
>
> Q. *So you don't know of your own knowledge whether he was ever told that?*
>
> A. *That he was in danger of being fired?*
>
> Q. *Yes.*
>
> A. *No.* [Emphasis supplied.]

April 18 Toronto performance, a particular panel, referred to in the record as the "Edsel panel," was not being used. Miss Fox further testified that "there were panels not hung"; but the only allegedly unhung panel she specifically described was the Edsel panel. Miss Fox testified (with some corroboration from Smith, from Waissman's account of her subsequent report to him, and from Davis' account of an undated report by the Waissmans to him) that Marino, who had not joined the show until the Washington run, told her that "He was told by Joe Doucette that this was the way he was given permission to hang it." In my first Decision, I discredited Smith's and Miss Fox's testimony that a panel or panels were missing without proper authorization. I relied in large part upon Respondents' failure to call Marino as a witness and my inference that no panel had been missing in the Washington run—an inference which I based on the Waissman's failure to testify that any panel was missing from the Washington show, even though both of them saw it while both Marino and the original production stage manger, Leddich, were with the show (pp. 11-12, fn. 10). Respondents excepted to my discrediting of Smith's and Miss Fox's testimony regarding the Edsel panel (Exception 4), and to my drawing an adverse inference from Marino's failure to testify. Respondents further averred, in their motions to the Board and the Court of Appeals, that Marino's testimony would be "cumulative and repetitive."

Marino did not corroborate Miss Fox's testimony that "panels" were missing from the Toronto show. As to the Edsel panel, he credibly testified that it was used in both Washington and Cleveland, where the show went between the Washington and the Toronto run. Marino further credibly testified that upon returning from Toronto to perform "advance work," Doucette told Marino that the layout of the Toronto theatre might create a problem with the Edsel panel,

which in the course of the performance flew in and a minute or so later flew out; that the panel was actually hung in Toronto to see if it could work; that it was badly warped; and that after watching it in Toronto Marino decided not to use it there because it was "dangerous" to use, "used to catch a lot on a large pipe," and "could knock a light off." Marino further credibly testified that he explained to Smith during his Toronto visit why the Edsel panel was not being used. I infer from the probabilities of the situation that Smith relayed this explanation to Miss Fox, and that Smith and/or Miss Fox relayed this explanation to Waissman. There is no evidence that the Edsel panel was ever used in Toronto.

To the extent inconsistent with the foregoing credible testimony of Marino, I modify my previous conclusion (p. 11, 11. 38-40, p. 12, 11. 33-34) that Doucette should be credited in testifying that with exceptions not material here, the entire show was used at all times, and he never had a conversation with Marino with respect to cutting some of the sets and scenery out of the show.

However, Marino's credible testimony confirms my finding that Miss Fox was not telling the truth when she said "panels" were "not hung," or in testifying that when Marino was asked why the Edsel panel was used, he replied that Doucette had said he had previously been given permission to omit a missing panel or panels—an allegation by Doucette which, if he had made it, would have been a conscious misrepresentation. For similar reasons, Marino's credible testimony impeaches the previously summarized testimony of Respondents' other witnesses in connection with such alleged misrepresentations by Doucette. Further, neither Smith nor Miss Fox adverted to Marino's statement that far from misrepresenting to Marino the basis for failing to use the Edsel panel, Doucette had hung the panel in Toronto, and

Marino had watched the panel operate there before accepting Doucette's recommendation that it not be used in that theatre. These testimonial efforts by Smith and Miss Fox to exaggerate (to say the least of it) Doucette's culpability in connection with the deficiencies in the Toronto show, and to minimize Marino's role, support my finding that these defects were not the real reason for Doucette's discharge.

(2) Other alleged defects in the Toronto show

Marino credibly testified, in accordance with my finding in my original Decision, that he was responsible for giving the cues which controlled the speed with which scenery flew in and out.

Smith testified that when he drew Marino's attention to the missing black masking in Toronto, Marino replied "that he was given the impression by the carpenter that it was okay not to use them." In my original Decision I discredited this testimony on the ground, *inter alia,* of Marino's failure to testify (p. 13 fn. 13, ll. 26-32). Respondents excepted to this finding (Exception 4) and alleged in their motions to the Board and the Court of Appeals that Marino's testimony would be "cumulative and repetitive." I adhere to my previous credibility finding. Marino credibly testified that when Smith mentioned the missing masking, Marino said that it was missing because of time problems and that he thought the scenery looked fine without the missing masking. As found in my initial Decision, Smith later acknowledged the time problem to Doucette. The missing masking was not hung in Toronto.[6]

[6] This last finding is based on Marino's testimony on cross-examination that "probably" the masking would have had to be repaired in Toronto to be hung the way Smith wanted it. Smith did not testify that the missing masking was hung in Toronto. I believe that Marino was mistaken in testifying, on direct examination, that this masking was in fact hung there.

Marino credibly testified, substantially in accordance with the findings in my original Decision, that the scratched paint on the props and platforms in Toronto was Marino's responsibility (see p. 13, ll. 0-11, p. 14, ll. 6-21), and that Doucette could not have corrected on the road the remaining defects in the Toronto show which fell within Doucette's jurisdiction—namely, the cracked panel (which Marino referred to as the "park flat") and the palm (or "hop") trees.[7] Marino further credibly testified that he told Smith that Doucette was not at fault in connection with the park flat and the palm trees, a message which I infer (from the probabilities of the situation) was relayed by Smith to Miss Fox and by one of them to Waissman. Marino further credibly testified that "all the things that they complained about that they felt were Mr. Doucette's responsibility, I didn't agree with."

Marino credibly testified that when he explained to Smith the reasons why Marino felt Doucette was not responsible for the cracked panel, the palm trees, and the missing masking, Smith replied, ". . . well, we have got to have it taken care of regardless."[8] Marino further credibly testified that although he felt responsible for and upset about the show's deficiencies, Smith told him not to be upset, "they didn't necessarily hold it against [Marino] because he was too new and still learning the show." This testimony and Respondents' contention that the discharge decision was made by Miss Fox and Waissman limit the significance of Marino's testimony that he regarded Doucette as free from blame for the April 18 show and told this to Smith. However, such testimony does cast some doubt on the sincerity of Miss Fox's alleged belief that Doucette was sufficiently responsible for such defects to warrant his discharge. The veracity of Respondents' witnesses

[7] These were decorations used at a dance or "hop".

[8] This statement led Marino to conclude that Smith and Miss Fox did not accept Marino's explanations.

regarding the intra-management conferences and decisions between April 18 and 23 is further drawn into question by the fact that Miss Fox and Smith did not testify about Marino's tendered defenses of Doucette but, on the contrary, falsely alleged that Marino attributed some of the defects to misrepresentations by Doucette.

(3) Marino's April representations to top management about his relationship with Doucette

My original Decision found that between April 18 and 23, Marino told Smith, Miss Fox, and Davis that Marino was having some trouble in getting along with Doucette (p. 13, 11. 12-13, 33-47, p. 23, 1. 35, p. 24, 1. 1.). I based this finding on Smith's, Miss Fox's, and Davis' testimony, but found that they were somewhat overstating Marino's complaints. In so finding, I relied on, *inter alia*, Marino's failure to testify. Respondents excepted to such reliance (Exception 4), contended that I should have unreservedly credited its witnesses' testimony in this respect, and asserted in Respondents' motions to the Board and the Court of Appeals that Marino's testimony would be "cumulative and repetitive."

When asked on direct examination whether Marino had had any "problems" with Doucette, Sr., before April 18, Marino credibly replied, "No, nothing that I can definitely say this is a problem, that is a problem." Marino further credibly testified "What [Smith and I] discussed in Toronto wasn't so much problems that I had. It was feelings that I had and the attitude that I had about what [Doucette] was like." I adhere to my finding summarized in the first two sentences of the preceding paragraph.[9]

[9] Miss Fox testified that Marino told her that he had trouble getting along with Doucette, that Doucette was not responding to Marino's re-

(Footnote continued on following page)

b. Events occurring after the alleged April 18-23 discharge decision

Marino testified that after the Toronto run, which terminated on April 21, he reached the conclusion that Doucette, Sr., was not a good carpenter, that he was "kind of lazy," and that he did not have an adequate sense of responsibility toward his work. Marino went on to testify that during a conversation which occurred after May 14 and a few days before May 26, he told the Waissmans that he was dissatisfied with Doucette, Sr., and asked that he be replaced "right away." According to Marino, he did not tell them that this request was based on the Edsel panel matter, and Marino "was not referring back, necessarily to Toronto." In addition, Marino testified that as nearly as he could recall, Waissman said that "he would look into it and see to it . . . take care of it;" that the Waissmans were "pacifying [Marino's] anger;" that Waissman never told him any specific time that Doucette, Sr., would be discharged; but that Marino "understood" from this conversation that Doucette would be discharged. At the first hearing, Waissman testified that during this conversation (which he credibly testified as having occurred on May 17), after Marino expressed dissatisfaction with Doucette, Sr., Waissman said "that we had already decided after that Toronto incident that [Doucette, Sr.] was going to be replaced and that [Davis] was going to pick a time so that problem was at least for the time being on the shelf

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(Footnote continued from preceding page)

quests, and (in response to a leading question on direct examination) that he wanted things done to the set that Doucette refused to do. She further testified that Smith told her that Marino said he had difficulty getting Doucette to do what Marino wanted done, and could not get cooperation from Doucette. Smith testified that Marino said "he was having difficulty relating to the crew and he felt that instead of [Doucette] giving him a hand and breaking him into the show, that he wasn't responding in that way." Davis testified that Marino said he felt he was "fighting" Doucette all the time.

and being resolved." Waissman further testified that when he mentioned the "unforgivable" cuts in the Toronto show, Marino said that he had been told by Doucette that "this is the way it had been done since Boston," the first city visited by the road show. In my initial Decision, I discredited, Waissman's testimony as to the content of this conversation on the ground, *inter alia,* that it was not corroborated by Marino (p. 24, ll. 8-16). On the basis of the witnesses' demeanor and my previous findings about Marino's prior explanations to management for the defects in the Toronto show, I credit Marino's version.[10]

Marino further testified that a few days before May 26, Marino described his dissatisfaction with Doucette, Sr.'s performance to Smith, and said that Marino "had had this [May 17] discussion with Mr. Waissman and Miss Fox in the hotel room and that they said that they were going to discharge him," but did not tell Smith when this was going to occur because Marino did not know. At the initial hearing, Smith gave a very similar version of the conversation, which according to him occurred on May 23. In my original Decision, I discredited Smith's testimony in this respect on the ground, *inter alia,* that it was not corroborated by Marino. I now conclude that both of them were telling the truth in this respect, although I regard Marino's version as more accurate. However, because Marino's credited testimony makes it clear that his May 23 statement to Smith was based on Marino's belief that the Waissmans had accepted Marino's May 17 recommendation that Doucette, Sr., be discharged (and not on any belief by Marino that the discharge decision had been made, as Respondents assert, several weeks earlier), and because no witness for Respondents testified that he or she

[10] Miss Fox was not asked about this conversation. Marino unequivocally testified that she was present, and Waissman's testimony suggests her presence.

decided to discharge Doucette, Sr., because of Marino's May 17 recommendation, my altered findings as to the May 23 conversation have no significance to the results herein. Further, Marino's testimony about his May 17 discussion with Waissman indicates that Marino had at least some suspicion that Waissman was merely trying to "pacify" Marino, and did not really intend to discharge Doucette. I find that this was Waissman's real motive for these remarks, particularly in view of Waissman's vagueness about specifics as to Doucette even though, that same day, Waissman in terms announced acceptance of Marino's recommendation that Weeden be discharged as well.[11] I note that Waissman did not testify that this May 17 conversation had anything to do with the discharge decision. Moreover, if in truth Doucette's discharge had already been decided on, Waissman's natural response to Marino's discharge request would have been a simple statement to that effect, rather than the vague and soothing remarks to which Marino credibly testified.

Doucette, Sr., testified at the first hearing, and I found in my original Decision, that a few days after the discharges Marino told Doucette, Sr., that Marino "had nothing to do" with the discharges, that he had "just heard about them" in the afternoon before the evening they occurred, and, "We finally got where we could work together. I just don't believe it." In the absence of Marino's testimony about the matter, I gave Marino's statement full face value, and relied thereon as a basis for discrediting Waissman's testimony about his May 17 conversation with Marino (which this Supplemental Decision discredits for other reasons) and Smith's testimony about his May 23 conversation with Marino (which this Sup-

[11] However, Marino's testimony suggests that his recommendation as to Weeden was concurred in by Jack Shearing, who had created the sound for the original production in New York. Weeden was in fact advised of his discharge about a week later.

plemental Decision accepts). Marino substantially corroborated Doucette, Sr.'s version of what Marino said, but credibly explained that he said he was "sorry" about Doucette's discharge because "A man's just been fired. I wasn't going to be pouring salt on the wound," and that Marino was not in fact surprised that Doucette was fired. Accordingly, these remarks as credibly explained by Marino do not support the inference that so far as Marino knew, the deficiencies in the Toronto show and top management's reaction to them did not point to the likelihood that Doucette, Sr., would be discharged for his part in those deficiencies (see p. 22, ll. 7-14, of my first Decision). However, at the second hearing, Marino testified in terms that he did not believe Doucette, Sr., was at fault for any of the deficiencies in the Toronto show; that he so advised Smith; and that in Toronto, Miss Fox and Smith did not tell him that Doucette, Sr., was going to be fired because of the problems in Toronto. Moreover, his testimony shows that his lack of surprise at Doucette, Sr.'s discharge was based solely on his belief that a discharge decision had been made on May 17, several weeks after the date which Respondents' witnesses and briefs attached to the discharge decision. Accordingly, Marino's explanation of his June 19 remarks to Doucette, Sr., provides no assistance to Respondents' cause.

c. Doucette, Jr.'s abilities

Respondents take the position that the decision to discharge Doucette, Jr., was likewise made on April 23.[12] Marino credibly testified that on various occasions he made un-

[12] See p. 9 of Respondents' brief to the Board, pp. 2-3 of Respondents' initial brief to me, and p. 6 of their second brief to me. Waissman testified that on April 23 he personally thought the discharge decision was applicable to both. However, his memory was "very cloudy" about whether Doucette, Jr., was mentioned during the April 23 conversation; and none of the other witnesses testified that Doucette, Jr., was referred to.

favorable comments about Doucette, Jr.'s work to Doucette, Sr., Waissman, and Davis. However, all these comments were made after April 23, and neither Waissman, nor Davis, nor Smith, nor Miss Fox testified that Doucette, Jr.'s discharge was in any respect motivated by Marino's expressed opinion of him.

Marino further credibly testified that it was "traditional" in the industry for the flyman to "automatically move up" to the job of a carpenter discharged from the same show. Marino credibly testified to the opinion that this tradition could not have been followed upon Doucette's discharge because Doucette, Jr. "wasn't much better." However, none of Respondents' witnesses testified that this was the reason he or she decided not to give Doucette, Jr. the carpenter's job. See p. 25, fn. 33, ll. 42-45, of my original Decision.

2. Antonelli's testimony

Respondents represented to the Board and the Court of Appeals that Antonelli would testify that he was informed of the decision to terminate Doucette, Sr., before his May 29 participation in the grievance meeting. However, Antonelli testified that he did not learn the date Doucette, Sr., would be discharged until the date (June 17) that it occurred,[13] and Antonelli's testimony as a whole shows that his assertion that

[13] In view of Antonelli's testimony in this respect Antonelli's and the Doucettes' mutually consistent testimony about Antonelli's remarks when discharging them (*infra*, fn. 14), and the witnesses' demeanor, I specifically discredit Davis' testimony at the first hearing that "some time before" the Doucettes' June 17 discharge (but he did not know exactly when), Davis told Antonelli that the Doucette would be discharged on June 17. In my first Decision, I implied that I was dubious about this testimony, and referred to Antonelli's failure to testify (p. 18, ll. 43-45, fn. 20). Respondents excepted to this reference; relied thereon in their motions to the Board and the Court of Appeals to reopen the record; and in both such motions alleged that Antonelli's testimony would be "cumulative and repetitive."

at an unspecified earlier time he "just felt" and "just knew" Doucette, Sr. would be discharged could not have been based on anything more substantial than hindsight. Thus, Antonelli conceded that when discharging the Doucettes on June 17, he told Doucette, Sr., that Antonelli did not know the reason for Doucette, Sr.'s discharge and wished he would find out from Davis.[14] Furthermore, although Union rules required that a carpenter and a flyman be employed by the show at all times, Antonelli testified that before Davis told him on June 17 to discharge the Doucettes that day, Antonelli had made no attempts to obtain replacements and had not been directed by Davis to seek for any. Indeed, the most specific expression by Davis to which Antonelli testified, "One of these days, I'm going to get rid of" Doucette, Sr., without referring to Doucette, Jr., falls short of expressing a final determination to discharge.[15]

Moreover, Antonelli's testimony about the reasons for the Doucettes' discharge is based entirely upon alleged ex-

[14] In my original Decision, I credited Doucette, Sr.'s testimony about what Antonelli said when discharging him and Doucette, Jr.'s testimony about Antonelli's remarks to him later that same day (p. 18, ll. 7-27). In this connection, I noted Antonelli's failure to testify, and Respondents excepted to my mentioning this (p. 18., ll. 43-44, Exception 4). At the second hearing, Antonelli testified that my original Decision described his conversation with Doucette, Sr., basically as it occurred; Antonelli was not asked about his conversation with Doucette, Jr. I adhere to the findings summarized in the first sentence of this footnote and to my prior inferences based thereon.

[15] No date was attached to this alleged remark. While I am inclined to believe that from time to time Davis did grumble to Antonelli about Doucette, I think the flavor of Davis' remarks is fairly accurately represented by his testimony, "I had a personal dissatisfaction from the very beginning. But I overlooked it constantly because I felt that I had no way—the job was getting done." The reasons for Davis' approach are shown by the arguments he assertedly advanced in April to the Waissmans in favor of Doucette's retention: ". . . who is to say that whoever you get is going to do the [road-show] job better than he. I had trouble getting a carpenter at the beginning, road carpenters are at a premium."

pressions to Antonelli by *Davis* regarding dissatisfaction with the work of Doucette, Sr., and to some extent of Doucette, Jr. Even if credited, such testimony could not affect the determination regarding the motives for the discharges; for at the first hearing Davis and the Waissmans testified that the discharge decision was made by the Waissmans and contrary to Davis' recommendations. In any event, particularly in view of Antonelli's demeanor and his admitted statement during the discharge interview that he did not know why Doucette, Sr., was being fired and Doucette, Jr., was being discharged because of their kinship, I discredit much of Antonelli's testimony about Davis' alleged complaints to him. Thus, I do not believe Antonelli's testimony, uncorroborated by Davis, that Davis complained that Doucette, Sr.'s expense accounts were inflated[16] and that (during a period as to whose duration Antonelli gave internally inconsistent testimony) Davis complained that without giving bonuses Davis could not get the show up in 8 hours. Indeed, even assuming Davis did make these remarks about bonuses, their relevance to the discharges would be questionable in view of Antonelli's testimony that the entire crew received bonuses in every city. Nor do I believe Antonelli's testimony regarding his telephone conversation with Davis on the day the Doucettes were discharged. Antonelli testified that on that day, he telephoned Davis in New York and reported that he thought Doucette was conspiring with the house carpenter to increase the show's planned expenditures for velour to make "soft legs;" and that Davis thereupon told Antonelli, in essence, to get rid of the Doucettes, that this was the final straw. Davis did not corroborate this testimony, which is particularly dif-

[16] Antonelli's duties included reimbursing company members, including Doucette, for transportation expenses and *per diem*. Antonelli did not testify that he had ever questioned Doucette's expense claims, or that Davis ever criticized Antonelli for honoring such claims.

ficult to reconcile with Antonelli's conceded statement to Doucette, Sr., when paying him off later that same day, that Antonelli did not know why Doucette, Sr., was being terminated.[17]

In my original Decision, I credited Doucette, Sr.'s testimony that on April 16 Antonelli told Doucette to telephone Davis in New York and see what could be done about Miss Fox's complaint that the sets were dirty and should be fixed, that Doucette then called Davis and said that the set should have been painted and touched up, and that Davis approved this. I discredited Davis' denial that he had any telephone conversation with Antonelli or Doucette while the show was in Toronto about painting the scenery, on the ground, *inter alia,* that Antonelli failed to testify (see p. 13, l. 19 to p. 14, l. 6, p. 14, ll. 34-38).[18] Respondents excepted to my reliance on such failure (Exception 4), and Respondents' motions to both the Board and the Court of Appeals alleged

[17] Respondents' June 1975 brief to me asserts at p. 18 that this alleged incident regarding the velour "accounts for the statement in [attorney] Arnold's letter [about 'suspicion of wrong doing'] and explains why the Doucettes were not given two weeks' notice. It is evident that both Arnold and Davis were reluctant to go into this matter without positive proof because they were afraid of being accused of libel." I find this contention to be without merit. Davis testified that he did not permit the Doucettes to work out two weeks' notice because he feared sabotage. Moreover, attorney Arnold's testimony tendered no such explanation for his letter, although he could hardly have feared a libel proceeding based upon his testimony as a witness.

[18] Davis testified as follows:

Q. [By Mr. Pollack] We were talking about a telephone conversation while the show was in Toronto with either Mr. Antonelli or Mr. Doucette in which the subject of painting the scenery and some of the props was concerned.

A. I don't recall.

Judge Sherman: Would you recall such a conversation if such a conversation had occurred?

The Witness: I would.

that Antonelli's testimony would be "cumulative and repetitive." At the second hearing, Antonelli testified that in connection with the way the set looked in Toronto, Miss Fox had him telephone Davis because she wanted the set repainted, and Davis said to get it done. I adhere to my finding in the first sentence of this paragraph and to my discrediting of Davis' denial. To the extent that Doucette's version differs from Antonelli's, I credit Doucette, whom I believe to be more honest and to have a better memory than Antonelli.

Antonelli credibly testified that the Grease Company had originally planned to retouch the scenery and props prior to the Los Angeles opening, and that this retouching was partly moved up to Toronto because of Miss Fox's dissatisfaction with the show there. This to some degree supports my prior inference that Doucette's blameworthiness for the defects in the Toronto show within his jurisdiction was not serious enough to call for acceptance of the contention that they constituted the real motivation for his discharge. Antonelli's testimony in this respect also provides some support for the finding in my first Decision that on April 19 Doucette told Miss Fox (who in effect denied this statement) that the set had not been repainted or the seats reupholstered because "we didn't have the money to do it in Detroit for the opening in LA" (p. 14, ll. 7-10).

B. Doucette, Sr.'s Supervisory Status Vel Non

The record at the second hearing contains some testimony regarding whether Doucette, Sr., was a supervisor within the meaning of the Act. Without determining whether such testimony is relevant to matters fairly within the scope of the remand,[19] for the purposes of convenience I shall summarize such evidence.

[19] Respondents' request for the remand was bottomed on the adverse inferences drawn from Marino's and Antonelli's failure to testify. No such inferences were drawn in connection with the supervisory issue.

1. The Board rejected my finding (p. 27, 11. 15-19) that Doucette, Sr., "had the authority, in the interest of the employer and in the exercise of independent judgment, responsibly to direct the employees in the carpentry department." Rather, the Board found, "Any direction or instruction by Doucette, Sr., is attributable essentially to his familiarity with the operation of the show. The job function of Doucette, Sr., was to adapt the set of the production to each theatre. This required him to explain to other employees how the stage should be set for this particular play, but did not require actual supervision or direction of stagehands as they performed their jobs in seeking this objective."

Marino's credible testimony establishes the following facts either absent or not wholly apparent from the original record: Every theatre has a house carpenter who is familiar with local rules and with the skills of the local carpenters who hang and dismantle the show. On the basis of Doucette's knowledge of the *Grease* scenery, when the show was being hung and dismantled he would tell the house carpenter which jobs had to be performed, how to perform them, and in what order. Thereupon, the house carpenter, because of his familiarity with local rules and the local carpenters' individual abilities, would make the selection, from among the crew sent out by the Local Union, of which employees were to perform particular tasks. If Doucette had a problem with a local carpenter, he would go to the house carpenter to do something (such as reassignment or replacement) about the problem. Doucette would go directly to the local carpenters to show them how and where the scenery was hung. If the foregoing evidence had been in the original record, I would not have made the finding set forth in the first sentence of the foregoing paragraph. Rather, I would have found that in connection with hanging and dismantling the show, Doucette was acting as a highly skilled craftsman who made mechanical

and quasi-artistic judgments with respect to equipment rather than employees. *Cf. N.L.R.B. v. Capital Transit Co.*, 221 F.2d 864, 866-867 (C.A.D.C.). Further, the foregoing evidence furnishes additional support to the Board's conclusion.

2. Both Marino and Antonelli corroborated the finding in my original Decision that Doucette participated with Antonelli in determining, after the opening night of the road show, how many carpenters would be used for the run of the show, including the number to be ordered from the Local Union in each city (p. 7, ll. 1-17; p. 26, l. 25- p. 27, l. 7).[20] However, the Board rejected, at least tacitly, my conclusion that particularly because Doucette was thus participating in the only part of "hiring" the local carpenters in which the employer had any voice, he was thereby exercising supervisory authority. Accordingly, the corroborative testimony in the record on remand provides no basis for a modification in the Board's determination that Doucette was not a supervisor.[21]

3. Marino credibly testified to a belief that the production carpenter was a supervisor. However, any probative value such testimony would otherwise have had is substantially diminished, if not overcome, by Marino's further testimony that he was not surprised at Doucette's presence at the Weeden grievance meeting because "it was his responsibility.

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[20] Antonelli testified that he was sure Doucette would also have discussed the matter with Davis. There is no direct testimony to this effect, and I regard the matter as immaterial. I believe Antonelli to have been mistaken in testifying, contrary to both Doucettes, that the number of stagehands never varied from city to city.

[21] I should like to convey my professional apologies for inadvertently conveying to the Board the impression that I regarded as supervisory Doucette's submission to each Local Union of a card containing the number of employees needed to work the show, to assure that the Local Union had proper notice of the need for local stagehands for the show and that the show used what the Union regarded as a sufficiently large crew. I did not intend to express any such view.

He was shop steward . . . He was there to protect . . . Weeden to see that he was properly heard."[22] I note, moreover, that Respondents' counsel attached to his motion to the Court of Appeals his own affidavit stating that Doucette, Sr., "interceded on behalf of a fellow employee."

C. Other Matters

1. In my first Decision, on the basis of Davis' then uncontradicted testimony, I found (p. 19, ll. 5-8), "As required by Union rules, the individual hired [by Davis] as the new carpenter was paid as such from the time the Doucettes were terminated, although he was unable to join the show for 2 or 3 weeks and the job was actually performed by a local carpenter in the meanwhile." No exceptions were filed to this finding. At the second hearing, Antonelli testified that a local carpenter performed the job until toward the end of the Los Angeles run, which lasted 12 or 13 weeks; that the new carpenter sent out by Davis took over the job just before the show moved from Los Angeles to its next destination (Chicago); and that there was little or no duplication of salaries. Because Antonelli was the company manager actually on the spot, and was in charge of the road-show payroll, I conclude that he was in a better position than Davis to know the facts. I credit Antonelli and withdraw the finding quoted at the beginning of this paragraph.

2. In my original Decision, I found, on the basis of Davis' testimony (which was then neither corroborated nor con-

[22] Marino testified that he could not remember asking what Doucette was doing at that meeting. While I regard Marino as a basically honest witness, I believe that Doucette had a clearer recollection of the incident. Moreover, Antonelli testified that the summary of the incident in my original Decision was a "very good account of what happened." Accordingly, I adhere to my finding, originally based on Doucette's testimony, that Marino asked why Doucette had to be there.

tradicted, p. 16, ll. 28-29) that on May 29, he asked Antonelli why Doucette had attended the Weeden grievance conference, and that Antonelli replied he did not know. No exceptions were filed to this finding. At the second hearing, Antonelli denied that Davis asked this question and received this response. Antonelli also testified that he was not surprised at Doucette's presence at the conference, because ". . . he was 'Poppa Joe.' He was a friend of the family . . . beside being the head carpenter . . . I thought that it was second nature for him to be there." Because Vignale and Marino also testified that they regarded Doucette's participation in the grievance meeting as only natural, and after considering the witnesses' demeanor, I accept Antonelli's testimony in this connection and discredit Davis.

3. Antonelli denied advising Davis that Doucette had called in Union representative Vignale. Davis did not testify otherwise, and I credit Antonelli. I note, however, that Davis did not deny knowing that Doucette did this, and Marino was not asked whether he reported this to Davis.

CONCLUSIONS OF LAW

The evidence received on remand contains nothing which would warrant altering the Board's June 13, 1974, Conclusions of Law. Such Conclusions thus being binding upon me, I recommend that they be reaffirmed by the Board.[23] Ac-

[23] Respondents devote several pages of their brief to urging that as a matter of law, Doucette, Sr.'s discharge for his grievance activity did not constitute an unfair labor practice assuming that he was a supervisor rather than an employee. This argument is supererogatory at this stage of the proceeding. I am unimpressed by Respondents' apparent contention that my proposed theory is improper because the supervisory defense would be available only to employers who admit that the supervisor was really discharged for union activity, and not to employers who falsely claim other motives. Respondents have apparently elected not to rely on *Beasley* v. *Food Fair, Inc.*, 416 U.S. 653 (issued between my first Decision and the Board's Decision), holding that the Act does not protect supervisors from discharge "solely" because of their Union membership.

cordingly, I hereby issue the following recommended Order.[24]

ORDER

Respondents shall comply with the Board's Order issued on June 13, 1974.

Dated at Washington, D. C.

NANCY M. SHERMAN,
Administrative Law Judge.

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[24] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein and in the Board's Decision dated June 13, 1974, shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[386] **Excerpts of Stenographic Transcript of Testimony at Hearing of May 2, 1975.**

BEFORE THE NATIONAL LABOR RELATIONS BOARD

2nd Region

In the Matter Of:

THEATER NOW, INC., and THE GREASE COMPANY,

and

JOSEPH F. DOUCETTE, SR.

Case No. 31-CA-3825.

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26 Federal Plaza
New York, New York
May 2, 1975

The above entitled matter came on for hearing, pursuant to Notice, remand, at 11:00 o'clock A.M.

Before: NANCY M. SHERMAN, *Administrative Law Judge.*

Appearances:

Richard Adelman, Esq., Battle, Fowler, Lidstone, Jaffin, Pierce & Kheel, Esqs., 280 Park Avenue, New York, New York 10017, appearing on behalf of Respondent.

Joel Arnold, Esq., Barandes, Rabbins & Arnold, Esqs., 18 East 48th Street, New York, New York, appearing on behalf of the Respondent.

Jay R. Pollack, Esq., 11000 Wilshire Boulevard, Los Angeles, California, appearing on behalf of General Counsel, Region 31.

* * *

[389] FRANK MARINO, called as a witness, having been first duly sworn in by Judge Sherman, was examined and testified as follows:

* * *

DIRECT EXAMINATION:

Q. (By Mr. Adelman) Would you tell us your current employment? [390] A. I'm currently the production stage manager of the production, All Over Town, a play at the Booth Theater.

Q. Would you go back and give us your prior employment. A. Well, presently I'm production stage manager on All Over Town at the Booth Theater.

Prior to that, I was production stage manager on "Morning Pictures."

Prior to that it was the opera "War & Peace" I was production stage manager, and prior to that, assistant stage manager on a production called "Jumpers."

Prior to that I was production stage manager of LaBoheme, "Gianni Schicchi, G-i-a-n-n-i S-c-h-i-c-c-h-i."

Prior to that—prior to that, Good Lord, what did I do next?

Oh, "The Grease Story."

Prior to that, production stage manager on the Grease Story.

Q. Would you tell us when you first became associated with the road production of Grease? A. It was in March of—'72, I think, two years back, '73, I'm sorry.

In Washington, D.C. I joined it.

> Judge Sherman: By the way, there is something that I intended to state for the record at the time of the first witness.
>
> [391] I have seen Grease. I saw it in Chicago before I wrote my decision.

Go ahead, Mr. Adelman, I'm sorry.

The Witness: Yes, in Washington, D.C.

Q. (By Mr. Adelman) And in what capacity were you employed? A. Production state manager.

Q. And would you tell us what your responsibilities and duties were as production stage manager? A. Well, as a production stage manager, you're physically in charge of the whole thing artistically.

He's artistically in charge of the production, which includes the staff, how the play looks and looks to the wishes of the producer, and it's his responsibility to make the show look and be as good as is humanly possible, that it's the best possible production of Grease every night.

Q. Did you do anything specifically in preparing to become the production stage manager of Grease on the road? A. Other than the experience of other plays I didn't have any particular formal training.

Is that what you mean?

Q. No.

Did you go to see the show in New York? [392] A. Yes.

I had to see the show.

I spent a two-week period in New York, learning the show as much as possible, hearing about the show, as far as what they demanded, "They" meaning their artistic staff, demanding in the way of quality.

Yes, I learned about the show in New York.

Q. Was there anybody on the job as production stage manager when you arrived? A. Yes.

Q. Who? A. William Leddich.

Q. Did you overlap for a period of time? A. Yes.

He stayed with me. I joined the last week in Washington.

We made the move to Cleveland next. He stayed with me in Cleveland.

We got the show up, and he left in Cleveland, the middle of the run.

Q. So—and where was the next stop? A. The next stop was Toronto.

Q. And Toronto was the first time that you were by yourself? A. Yes.

* * *

[393] Q. Do you know the Doucettes? A. Yes.

Q. When did you first meet them? A. When I joined the show in Washington, D.C.

Q. And what were the positions held by the Doucettes? A. Joe Doucette, Sr. was the production carpenter and Joe Doucette, Jr. was the production flyman.

Q. Could you tell us where the production carpenter and the production flyman fit into the hierarchy with respect to the production stage manager? A. Well, as I understand that, they are—like the production stage manager is the supervisor to all the crew heads.

Q. And where does the production stage manager fit in with regard to the other people in management of the production? A. Well, usually on the hierarchy, I understood the production stage manager is responsible to the general manager.

Q. Who was the general manager on the Grease show? A. Eddie Davis.

Q And who else is in the hierarchy? A. Well, like set apart with the stage manager, would be—on an equal level to the production stage manager would [394] be the company manager, both of us being responsible.

Me, for example, would be responsible for the back stage, being responsible for the back and the other manager being responsible for the ticket sales or business.

Q. Who was the company manager? A. Donald Antonelli.

Q. Now, what role does the production stage manager play in the handling of a show? A. Well, actually, the production stage manager knows what the show should look like in conjunction with the carpenter who is usually the most important crew member.

He gets the show up as it's supposed to be gotten up.

If there are any problems like certains things have been damaged in transit, or something cannot be hung, or something has to be hung different than what we have always been doing, they get together to decide about what to do to correct problems or cut pieces.

Q. Now—

Judge Sherman: By "cut" what do you mean?

The Witness: By not using it.

* * *

Q. (By Mr. Adelman) Now, how is it decided how a show [395] is going to be hung in each City that it is to be played in? A. Well, basically the production carpenter decides that.

For example, when we are in one City, the production carpenter takes some time off and goes to the next City, checks out the fly floor, and sees the situation, "lays out" as we call it, his fly plot, how he's going to handle things.

Now, if he runs into any problems, like let's say where there are no pipes, where we need them or the pipes are too tight, well, he makes the decision about such things on the spot.

If there is a major problem, he won't make that decision then.

Q. And that function is performed by the production carpenter? A. Yes.

Q. Who is the production carpenter on the show? A. Joe Doucette, Sr.

Q. Who decides how many stage hands are to be used in

each City? A. Well, that's actually decided at the very early part of the tour with what's called the "yellow card."

Between the carpenter and the manager, they decide [396] how many people that they need to run the show up to their optimum and then they finalize the yellow card and from that time on, every house, that number of men are always used to do the show.

* * *

Now, who supervises the dismantling of the scenery and the sets?

Judge Sherman: Mr. Adelman, I wish that you would not use the word "supervise" in this case.

Mr. Adelman: I'm sorry.

Q. (By Mr. Adelman) Who is in—who is responsible for the dismantling of scenery when a show moves from one— A. The production carpenter.

Q. —City to another? A. The production carpenter.

Q. Now, would you tell us exactly what he does in bringing this about? A. Well, when the show comes down in one City, he organizes the work crews and assigns them the things to do, starts taking the things down, prepares for their shipping and packing, loads the truck and cleans up the—cleans up the theater,—sees to it that it is all cleaned up and—he doesn't physically take a broom and sweep.

I don't mean that.

I mean he's the overall—I can't use the word [397] "supervisor".

He's like the overall responsible head, and sees to it that the work is done.

Q. Does he actually direct the stage hands while it's being performed? A. Absolutely.

You see, the other stage hands don't know the show like the carpenter.

Certain things have to be packed a certain way. He knows that.

Certain hardware has to come off first.

He has to tell them.

Q. Now, who is the one who is responsible for the restaging of the show when it moves to another City? A. Well, "restaging" is the wrong word.

The right word would be "rehanging" the show.

Q. Okay. A. Again the production carpenter.

Q. How does he do this? A. Well, the trucks arrive, and he has to supervise the unloading.

The thing to do is to unload what's needed first.

He unloads the scenery, supervises that, sees to it that it is done correctly, and—I'm sorry, I just lost my train of thought—he assigns the men to the [398] crews to do the work, the men that have arrived, the local union, sees that the show gets up as soon as possible, in the way that it was decided to look, sees to it that it's all up hanging, ready to do a show by a particular number of hours, so that we can do the show.

Q. Did Mr. Doucette perform these functions on the Grease show? A. Yes.

Judge Sherman: You mean Mr. Doucette, Sr.?

Mr. Adelman: Yes, I'm sorry, Joseph Doucette, Sr.

A. Yes.

Q. Now, you described situations where in some instances the scenery cannot be hung properly or not at all.

Did this ever occur in any of the Cities that Grease went to? A. Yes, it did.

I mean, for example, some pieces of the scenery couldn't always be used, based on the way the pipe system was laid out, because either they were too snug or that it participated moving scenery too far up stage.

There was certain scenery that could not be used in certain Cities.

Q. Could you give us an example of such a situation? A. Well, I remember—as I understand it, I was told that if that should ever happen artistically and you had [399] to make a decision to cut something, well, I was told what to cut.

Judge Sherman: Who told you?

The Witness: The artistic personnel—personnel, because they all knew that sometimes that you ran into difficult problems in different cities, and you had to make the decision, and that is what you had to do if you had to do without.

Q. There was a specific example where a particular set or scene was not used in a city or was not used the way that it might have been used in the New York show? A. Well, you should—I think that we should clarify it was not totally the same as the New York show.

It was a traveling version of the New York show, so certain things were cut.

I'm sorry, I can't remember specifically a particular city.

Q. Well, was there a situation in Washington, for example, regarding that? A. "Hard legs" in Washington, but you see, that wasn't me.

That was put up by the other production stage manager, but with the situation of the "hard legs", it did not work as per requirement.

I don't know. It didn't work.

[400] Judge Sherman: What do you mean "it didn't work"?

The Witness: Well, they were supposed to fly in on a particular cue with the music and many times, I guess, I was told, that sometimes because of the tightness they couldn't always be used as efficiently as they wished.

Sometimes they were cut.

Judge Sherman: Who told you this?

The Witness: The production stage manager then, William Leddich.

Q. (By Mr. Adelman) Were the "hard legs" different in Washington than let's say Toronto, for example? A. I don't think we flew them in Toronto.

They were permanent in Toronto.

As I remember, it's so long ago, and so much—I remember not using them in Toronto.

I remember not flying them.

It was a hamphouse.

Q. What is that? A. Instead of cable holding the pipe, rope was holding the pipe and instead of using iron for weight, we had to use sandbags and they were very, very heavy.

* * *

[401] Q. Who would make the decision as to whether that particular set would fly or would be permanent? A. Well, whether we were capable of flying it or not the carpenter would make that decision.

He would know beforehand the problems with the house, if we could do it or if he would have a problem flying this or whatever, and then I would decide whether I would not use them or would use them, but basically he would know better whether they could or could not be used.

Q. Now, there was some mention in the prior hearing about the so-called "Edsel panel". A. Yes.

Q. Now, could you tell us about the "Edsel panel" in a show, if you could. A. Well, it ended one scene and started another.

It basically flew in, set an atmosphere and flew out again.

Q. How long was it set? A. Well, to me I would say that it's a very, very brief time.

Q. A minute, 30 seconds, five seconds? A. Well, I'd say at least a minute, because it was at least 16 bars of music.

It flew in, the boys ran in the set.

Q. Were there ever situations where the "Edsel panel" [402] was not used? A. Yes.

I recall a situation where I said not to use it because it was badly warped and it used to catch a lot on a large pipe and I felt that it would be dangerous to use it, so I struck it from that particular run, but I don't remember what city it was.

Q. Was there ever a situation that because the panel was late coming in, it was not used? A. "Late" I don't understand.

Q. As I understand what you said, the panel has to come in on a certain cue? A. Yes.

Q. Was there ever a situation where that cue was missed? A. Yes.

All the flats.

I mean those are mistakes.

Sometimes it happens in the course of a performance. Sometimes it could have been my mistake, I could have forgotten to call it, or I called it late, and it just didn't happen.

Q. Now, who was responsible for repairs, to see that the set is in good order and that the repairs are made to the various sets, props and scenery? A. Well, I considered it my responsibility to see that [403] it looked a particular way.

When it was damaged or was looking tacky and tired I would go to the carpenter and say we have got to fix this or that, and then Joe would see to it that it got done—Mr. Doucette, Sr. would see that it got done.

Q. It's the carpenter's responsibility to take care of repairs on his own at anytime? A. No.

Actually there's an unwritten sort of attitude that it's a pride in your work that the show is looking its best, but if the work is not getting done, then the production stage manager

gives a note—you give a note to the particular department heads, whatever, that this has to be done, this should be repaired.

More often than not you expect it to be done, you know, without you having to tell someone.

Q. Did you have to tell Mr. Doucette, Sr., to do these types of repairs? A. Yes, when they had to be done, yes.

* * *

[406] Judge Sherman: Well, we will consider later whether the evidence is within the scope of the remand or not.

Mr. Adelman, would you ask the question again, please, and you have your exception, of course, Mr. Pollack.

Q. (By Mr. Adelman) Did you consider the production carpenter a supervisor? A. Yes, I did.

Q. Prior to April 18th when Miss Fox, Miss Birch and Mr. Smith came to Toronto to review the show, did you have any problems with Mr. Doucette, Sr., who was the production carpenter? A. No, nothing that I can definitely say this is a problem, that is a problem.

Again, I was terribly new with the production then, and I was still meeting and getting to know the people and feeling, you know, the relationships, including the actors as well as the crew.

I was totally new with them and they were new to me.

I guess that's the best way that I can answer it.

Q. Do you know if there was any special reason why Miss Fox, et al came to review the show in Toronto? A. It was pretty much standard procedure.

Anytime they can come to see how things looked.

[407] Q. Did you attend the matinee of April 17th? A. I was at every performance, yes, I did.

Q. Do you recall the matinee that was attended by Miss Fox and the others? A. Yes, yes.

Q. Could you tell us what Miss Fox's reaction was to the show? A. Well, she seemed very upset and unhappy about the look of the show, sloppiness of the show, the scenery, certain sloppinesses in the choreography, in the music, sort of just generally displeased with the way that the thing looked.

* * *

[408] Q. Did you have discussions with Miss Fox and Mr. Smith with regard to how the show looked? A. Yes.

She met with me later and gave me notes about it, complaints.

Q. Could you give us some specific complaints that she had?

Judge Sherman: By the way, who were the others?

The Witness: Miss Birch came and went during the course of that, but she was there also.

Judge Sherman: Sorry, Mr. Adelman.

Q. (By Mr. Adelman) Would you tell us the nature of what they had to say? A. Well, they felt the production was very sloppy, and what they meant by that—

* * *

[409] The Witness: I'm sorry?

Judge Sherman: And who said it.

A. They said—

Judge Sherman: Who?

The Witness: Well—

Judge Sherman: If it's both of them, tell us that.

If you don't remember if it was one or the other, tell us that also.

If you do remember, then please tell us.

The Witness: I'm trying to reconstruct as much as possible what—you see, I guess it's more Mr. Smith.

Mr. Smith was my direct artistic supervisor, and he gave me the gist of the notes, so I guess that it's Mr. Smith who basically gave me all of these things.

In attendance was Miss Fox. She spoke very little.

They were unhappy with some of the costuming.

It seems that certain pieces of costuming were not worn.

The actors had taken it upon themselves not to wear a particular pieces and they were unhappy with that.

They also complained about the choreography and the scenery.

To fix the choreography we had a rehearsal to tighten it up, the choreography.

I was given notes about two particular items.

[410] The notes were about the scenery.

They thought that the scenery looked rather scratched and sloppy, but in particular they complained about a crack that appeared in the park flat, and they were unhappy about the hop trees, how they looked.

There were two kinds of palm trees that were in the hop number and there was some masking missing.

Q. Did they state to you who they thought was responsible for this? A. Well, they claimed that Joe Doucette, Sr. was responsible, and I said that he was not actually responsible because the kind of things that seems to me to be wrong with the scenery he couldn't repair on the road.

For example, the crack that appeared in the park flat was there because it was designed that way.

There were two pieces that were bolted together, and for him to fix it, he had to get a new photograph and blow it up, which we were not able to do, and I also understood that they were also unhappy with the palm trees, because in New York, they were three dimensional, whereas with our company, they were flat, not three dimensional.

Now, he could not do anything about that, so I didn't pay too much attention to that note.

Q. How about the masking? A. The masking, again, I did not agree totally with, [411] because as far as I could tell, four or five seats on the side of the house could see up through there, and there was no time to hang the masking.

The masking is the last thing that is done.

When the lights are up and the scenery, we do the masking and—so, I assumed that that was left out because we had run out of time, and as far as I was concerned, artistically, it made no valid difference.

It didn't seem all that important to me.

Q. Did they accept your explanations? A. No.

I say no. They didn't say to me no, I don't accept—no, they didn't accept my explanations.

Judge Sherman: What is the basis of your statement to that effect?

The Witness: Because as I remember it, I stated my explanations to Tommy Smith and I remember something to the effect like, well, we have got to have it taken care of regardless, and we did get the masking taken care of.

He stayed and saw to it that Joe hung the masking that they were complaining about.

There was nothing that we could really do about the park flat, and the trees which he knew, and arrangements were made to take care of it, either to rebuild them in New York or leave them the way that they were.

[412] Judge Sherman: Did either Miss Fox or Mr. Smith state that they regarded Mr. Doucette, Sr. as being the one responsible for any of the defects of the show, other than the masking, the hop trees or the park flat?

The Witness: Well, the other defects, I assume that you mean such as the costuming and choreography?

Judge Sherman: Yes.

The Witness: No, because it was not Joe's domain.

Judge Sherman: Go ahead, Mr. Adelman.

Mr. Adelman: Yes.

Q. (By Mr. Adelman) What was done to correct the deficiencies in general? A. Well, for the sloppiness of the actors, we had a rehersal and Miss Birch did some correction in the choreography.

For the costumes the wardrobe director was notified.

The actors that were not wearing the costumes were given notes, and there was a paint call, and we did some general painting of certain props like the benches and some platforms were painted.

Q. Are all these normally the responsibilities of the stage manager? A. I thought so.

Q. And how many weeks had you been with the show at that point when Miss Fox and the other came? [413] A. At that point, I had been a week in Washington and a week in Cleveland and I think, I don't know exactly where in the Toronto run of the three weeks they were there.

The 18th. I don't know if that was the first week or the second week or—but approximately two or three weeks.

Q. And you say this was the first time that you did the show alone? A. Yes.

This was the first time that Mr. Leddich had left and I was alone.

Q. Were they aware of that? A. Yes.

Q. Was there any mention of this to you in the discussions that you had with them? A. Yes.

Tommy said to me that I should not be upset about it.

I was upset. I felt that I was responsible. They didn't necessarily hold it against me because I was too new and still learning the show, but still I was upset about it.

Q. Have you worked with other carpenters? A. Yes, I have.

In other shows that I have done, they all have a carpenter.

* * *

[414] Q. (By Mr. Adelman) Did you consider Mr. Doucette, Sr. a good carpenter? A. No, I did not.

Q. Why not? A. Well. I didn't think that he was—I thought he was kind of lazy.

I thought that he did as little as possible, the least bit, getting away with the least work and trying to [415] pass a lot of things off as being good when I didn't feel that they were, and his sense of responsibility, I felt was not there toward the work.

Q. Was Mr. Doucette present at the time these discussions were held?

Judge Sherman: Which one?

Q. Mr. Doucette, Sr.? A. Which discussions?

Q. With—at the time of the showing in Toronto? A. No. He was away in Detroit doing what we call an "advance call".

Q. Was there any discussion as to why he was not there? A. No.

Q. Do you know how long he had been away? A. He had been away three days as I recall.

Q Did you know when he was going to return? A. Not precisely.

Like I didn't know that he was going to come back on Wednesday at 10:00 o'clock.

I know that he was due back at any moment.

Q. Did you tell that to Miss Fox and Mr. Smith? A. Yes.

Q. Was Mr. Doucette often away from the performance of [416] the sho` A. Well, seemingly, yes.

Many, many he would just not be there, either for work pertainin .ie show, sometimes, which were excused absenses, or other times I assume that it was for business.

Q. Now, subsequent to the viewing of the show in Toronto by Miss Smith—Miss Fox, Mr. Smith and Miss

Birch, did you have occasion to talk to anyone in management about problems that you had with Mr. Doucette, Sr.? A. Yes.

I discussed it with Tommy Smith.

Q. Would you tell us when this was or where it was during the time of the run? A. Well, we discussed it in Toronto.

What we discussed in Toronto wasn't so much problems that I had.

It was feelings that I had and the attitude that I had about what he was like.

When we got into Detroit, Tommy came to Detroit also, when we were there to help us put in a new actress.

Q. Did you talk to Mr. Waissman? A. Yes, in Detroit.

Q. Would you tell us when this occurred? A. Well, it was either the third or fourth week of our [417] five week run in Detroit.

I was—I had a meeting with Mr. Waissman and Miss Fox at their hotel room, and we discussed problems of the show, and it was at that point that I asked that Mr. Doucette be fired.

Q. Would you tell us approximately when this was again? A. It was either the third or fourth week of our five week run.

I'm not positive.

Q. According to Exhibit—

Judge Sherman: Six, I think.

Q. —General Counsel's Exhibit 5, the show was in Detroit between April 25th and May 26th. A. Now, I've got to pinpoint a date?

Q. Well, I think that it was in the third or fourth week. A. Yes, it was in the middle of the run, in the middle of the run out of the five weeks.

Q. Okay.

Could you tell us the discussions that you had with Mr. Waissman, what you said to him and what he said to you? A. Well, the reason that Mr. Waissman and Miss Fox was in

Detroit, along with Jack Shearing, is that I had asked them to come because I was having difficulty with the [418] sound manager, and I asked them to come and bring Mr. Shearing.

He could give me an opinion. He could either corroborate or disprove what I was saying, because sound is a very difficult thing, and they arrived and they saw the show.

Afterwards, we were to meet at the hotel room to discuss the sound problems.

Mr. Shearing met with us briefly and rendered his opinion and then left and then Mr. Waissman and Miss Fox and I continued discussing the other problems, at which time Mr. Doucette came under discussion at which time we discussed that.

I laid out some of the feelings that I had, like his absences, and what I felt was the general sloppiness of the work, at which time that I asked that he be replaced.

Q. And what did Mr. Waissman tell you? A. That he would look into it and see to it.

Q. Did he tell you—would you tell us specifically what he said to you, if you recall? A. Gosh, I cannot recall word for word.

You know, it's been over two years.

I remember that he said that he would take care of it, but it was not something that he could necessarily do on the spot. [419] There were things to discuss with Mr. Davis, the general manager, as to how to do it, not to jeopardize the show.

We had a big L.A. opening in a few weeks.

It was very, very important. They had to see if they could get someone to replace him.

It was not a decision that he could make at that time.

He lead me—the wording, as I recall, was that he would look into it and take care of it.

I'm sorry, I can't remember the exact words that he used.

You have to remember that it was awhile ago, you know.

Q. In your judgment, if Joe Doucette, Sr. had been discharged in Detroit, would that have jeopardized the show? A. I didn't think so.

I wanted it right away.

Q. What? A. Mr. Doucette replaced right away. I wanted it right away.

Q. Now, what was the feeling of other people in management—

Mr. Pollack: Objection.

[420] Q. —if you know?

Judge Sherman: Well, based upon statements made to him by other members of the management, Mr. Adelman.

Did anybody else in management make any comments to you about this, their opinions about this?

The Witness: Well, in the sense that—yes, you know.

It was like they were pacifying my anger that I wanted it done right away.

Judge Sherman: Who said this?

The Witness: Mr. Waissman and Miss Fox, yes, we will take care of it.

As to how or when, we have to look into that.

I was like—it was like I was being irrational.

I probably was not thinking clear enough beyond what they were.

Judge Sherman: Have you finished your answer?

The Witness: Yes.

Judge Sherman: Proceed, Mr. Adelman.

Mr. Adelman: Yes.

(By Mr. Adelman) Isn't it true that usually a flyman replaces the carpenter if the carpenter is discharged? A. Well,

it's traditional that he would move up because we assume that he knows the show as well and if you have an emergency situation where either someone has to quit [421] right away or someone is fired right away, that the assistant would automatically move up.

I have an assistant. If I were to leave, he would traditionally—he would move up into my position.

He knows the show as well as I do.

Q. Now, why couldn't that have been done in this show? A. Well, Joe, Jr. was the assistant and he wasn't much better.

Q. Now, was Mr. Doucette, Jr. discussed in your meeting with—with Mr. Waissman? A. That I don't remember now.

I mean, it was not a point of discussion, yes we will fire him immediately and get someone else, or yes, we will fire him and move up Joe, Jr.

Q. Was any indication given to you as to the exact date of discharge? A. No exact date, no.

Judge Sherman: Was there any discussion between the three of you about Mr. Doucette, Jr.'s abilities?

The Witness: No, not that I can recall as far as, you know, laying it out.

Judge Sherman: Have you ever told anyone about your opinions of Joe, Sr.'s son, Joe, Jr.?

The Witness: Yes, Joe, Sr., Mr. Waissman, Eddie Davis, [422] the General Manager.

Judge Sherman: Perhaps you can get some dates, Mr. Adelman.

Mr. Adelman: Yes.

Q. (By Mr. Adelman) Could you indicate to us when you told either Mr. Waissman, Mr. Davis, Mr. Smith or Mr. Doucette, Sr. about Joe, Jr.'s ability?

* * *

A. Well, that one I remember specifically because it was during the meeting that we had with the —in Cincinnati with the gentleman from the Union.

I don't remember his name.

Judge Sherman: Would that have been Mr. Vignale?

The Witness: Yes.

[423] Q. Do you recall mentioning it to Mr. Waissman, and if so, tell us when? A. Mr. Waisman, I recall mentioning it too, but I'm sorry, I don't remember.

It was sometime in Detroit. It wasn't in that meeting, because that meeting, it seemed to take—most of the time involved Mr. Weeden and Mr. Doucette, Sr., most of the conversations, but they were in Detroit four to five days or a longer period, and I saw them everytime, of course, and things were discussed.

It's very difficult for me to remember.

I'm sorry.

Q. Do you recall mentioning Joe, Jr.'s ability to Mr. Davis? A. Yes.

That was in Detroit because I used to have to talk to Mr. Davis quite frequently on the telephone, sort of keeping him up on the show.

Q. When did you do that? A. Quite often.

Q. What did you tell him about Joe, Jr.'s ability— A. Well—

Q. —either as a flyman or as a prospective carpenter? A. Well, as a flyman, yes, I remember it being in Detroit because Joe, Sr. was away for a period of ten or [424] fifteen days.

I think that it was fifteen days, and so, ostensibly Joe, Jr. was in there while his father was away and I don't think—I didn't think that he was doing a responsible job.

For example, one of the things that I felt was incompetent on Joe, Jr.'s part was that his main responsibility as a flyman

is to be on the floor and as a particular piece of moving scenery is coming in, he's watching that as it's coming in, seeing that it clears everything, and seeing that it hits the floor cleanly and he'd be constantly reading a magazine when the things would be happening.

A fly piece would be coming in. He was reading a magazine. It could bounce, and there were more than one situations like that when that would happen.

Judge Sherman: This conversation that you had with Mr. Davis, when was it?

The Witness: It must have been the second or the third week.

That's when Joe, Sr. was away.

* * *

[425] Q. (By Mr. Adelman) Now, did there come a time in Detroit when Mr. Smith came on to the scene? A. Yes.

Mr. Smith joined us because he had to put in a new actress.

We were replacing our leading lady, and Tom brought her to Detroit and we rehearsed her into the show.

Q. Do you recall when? A. Well, it was near the end of the run because she was going to take over in Cincinnati.

She would perform in Cincinnati, and so we would rehearse her in Detroit.

Q. And this was subsequent to your discussion with Mr. Waissman? A. It was after my discussion—it was after.

Q. Would you—the question—did the question of Mr. Doucette, Sr., come into the discussion with Mr. Smith? A. Yes.

We discussed a lot of the things about the show when he was there, the actors, the problems of the show, how the people were performing as far as doing their work and stuff, and Mr. Doucette would have been under discussion.

Q. Did you discuss Mr. Doucette's ability as—Mr.

Doucette, Sr.'s ability as a carpenter with Mr. Smith? [426] A. Yes, I did.

Q. Would you tell us what was said? A. Pretty much the same things that I had said, the laziness, the lack of responsibility, or sense of responsibility on the job.

Q. Was there any discussion about his being discharged? A. I mentioned to Tommy that I had had this discussion with Mr. Waissman and Miss Fox in the hotel room and that they said that they were going to discharge him.

Q. Did you tell him when it was going to occur? A. I didn't know specifically as to what date.

* * *

Q. (By Mr. Adelman) Mr. Marino, have you read the Administrative Law Judge's decision regarding the Weeden incident? A. Yes.

Q. Did that incident happen pretty much as it was reported in the decision? [427] A. Yes.

Q. Were you surprised that he was at the meeting? A. No.

Q. Why were you not surprised? A. Well, it was his responsibility.

He was shop steward.

Q. Did you ask what Doucette was doing at the meeting? A. I don't remember asking that question.

Q. Did Doucette say anything to you about attending the grievance meeting that it was his responsibility? A. I'm sorry, I don't remember if he did.

Q. What role did Doucette play at the grievance meeting? A. Well, he was there to protect Bob, Mr. Weedon to see that he was properly heard, and he basically sat there.

Q. Did he play an active role? A. I don't remember him being that actively involved.

It was really just a discussion between myself and Mr. Weeden and why I was unhappy, why I wanted him fired.

So, basically, it was Mr. Weeden and I who were doing the dialogue along with Mr. Vignale.

Q. Now, do you know when Mr. Doucette, Sr. was discharged? A. He was discharged in Los Angeles after we opened in Los Angeles.

Q. How did you find out? [428] A. He told me—either he or Mr. Antonelli told me the day that it happened.

I don't remember which one came to me first and told me.

Q. Did Mr. Doucette, Sr. ever say to you "I'll probably be fired in Los Angeles" prior to the discharge? A. I remember some discussion like that, but it was such a small talk type of conversation.

It was not—it was like discussing procedure to save money, more than likely I'll probably be discharged in Los Angeles.

Who needs me?

Q. When did he say this to you? A. I remember it being in Denver. It was prior to the Los Angeles run.

Q. Was this after the Weeden incident? A. It was after Cincinnati, yes.

Q. Did you have a conversation with Mr. Doucette after he was discharged about your reaction to the discharge? A. Yes.

* * *

Q. What did you tell him during this discussion? [429] A. I don't really remember, to be honest, but as it was stated in the record, I said something to the effect like, "I'm sorry. I didn't know that this was going to happen," things like that.

A man's just been fired. I wasn't going to be pouring salt on the wound.

Q. Were you in fact surprised that he was fired? A. No.

* * *

CROSS EXAMINATION:

Q. (By Mr. Pollack) Okay, first I'd like to direct your attention to some of your testimony today about Mr. Doucette's duties as a carpenter on the Grease show? A. Yes.

Q. First, basically both you and Mr. Doucette had duties with respect to the scenery; is that correct? A. Yes.

Q. And actually well, your duties were artistic and his were more in terms of carpentry and expense; is that correct? A. Well, expense was also part of mine.

Well, if we had to replace something for example, he would say it would cost $5,000, I would have to get approval.

[430] Q. Wouldn't he have to get approval for an expense from Mr. Antonelli or Mr. Davis? A. Yes.

Q. Wasn't part of your displeasure with Mr. Doucette also displeasure with Mr. Antonelli or Mr. Davis because you could not get the money for the sets or props? A. No, I wouldn't say that.

Q. But there was a limit on what Mr. Doucette could do to keep these sets in the proper quality because he would have to get approval to spend money? A. Of course.

We had to get approval to spend any money.

Any amount of money Mr. Davis had to approve.

Q. For example, a paint call. Mr. Doucette couldn't call a paint call? A. Yes, he did in Detroit on a holiday.

Q. Didn't you testify that it was Mr. Davis in New York who called a paint call? A. In conjunction with Mr. Doucette.

Q. But Mr. Davis would have to give the approval? A. Yes, of course.

Q. Now, prior to that paint call in Toronto, isn't it a fact that Mr. Doucette wanted to call a paint call but was called by Mr. Davis to wait to do it later in the run, just prior to the Los Angeles opening? [431] A. If it was, I wouldn't know.

No one said anything to me about it.

I mean, it may have happened. I don't know.

Q. Now, in the show there was a piece referred to as the "Edsel panel." A. Yes.

Q. Now, in discussions with you about that panel, didn't Mr. Doucette refer to it as a "liquor store"? A. Yes, that was the same name.

Q. It was an Edsel in front of a liquor store? A. Well, not entirely.

It was a window of a liquor store with an Edsel in front.

Yes, it was called the "liquor flat also."

Q. Now, that liquor flat was in the show in Washington? A. Yes.

Q. And it was in the show in Cleveland? A. Yes.

It was almost always in.

Q. All right.

Now, while the show was in Cleveland Mr. Doucette went to Toronto to—A. To do his advance work.

Q. Yes.

He does things such as site lines? [432] A. Yes.

Q. That's the hanging of rope? A. Yes.

Q. And when he came back from Toronto, didn't he tell you that there would be a problem with the liquor store or the Edsel piece? A. Yes.

I'm sure that he did.

I'm sure if he had a problem he told me about it.

Q. Because he needed your approval not to use that? A. Yes.

Q. Now, isn't it a fact that he actually hung the piece in Toronto? A. Yes, we actually hung it to see if it could work.

Q. And you watched to see whether it would be used even though it was hung? A. Yes.

It was badly warped.

Q. And you didn't use it? A. That's right.

Q. Now, did you ever explain this to Mr. Smith? A. Well, yes.

You see, almost all the—all the things that they complained about that they felt were Mr. Doucette's responsibility, I didn't agree with, and that was one of them. [433] As far as I was concerned, if that flat couldn't work, I really didn't think that it would harm the show, and I know that he couldn't do anything about the park flat and I knew that he couldn't do anything about the hop trees, and I told that to Tommy.

Q. And did you also explain the danger of using it, the danger in using it? A. Yes, I did.

It could knock a light off.

Judge Sherman: Did you explain the Edsel panel matter to Miss Fox?

The Witness: No, I didn't directly talk to her.

You see, my notes again came through Mr. Smith.

Q. (By Mr. Pollack) Was Miss Fox present while you were having these discussions? A. I don't think so at that time when I was getting my notes about actors, and scenery.

Miss Fox had since gone.

Q. Now, by notes, do you mean written notes? A. Well, actually what they are are notes that are taken down during the course of the show.

They were taken down anything that they don't like on a tablet.

Q. Mr. Smith— A. Yes, they all wrote some and what they do is that they [434] write down all the things that are happening that they dislike and then separate them, go to the different departments and say, "Note number one, so and so entered up left instead of up right. Number two, there is a big scratch in a certain flat, note three, there is a tear."

Mr. Smith was so organized he would retype them and hand out individual sheets to different people.

Q. Now, there were notes—you say that there were notes for the carpenter, Mr. Smith typed them.

Did he give the notes to you? A. Yes.

I had to see that they got done.

He may have given—both of us, me and Joe would have gotten verbal and written notes.

Q. Did you ever see him give a note to Mr. Doucette? A. Physically?

Q. Yes. A. Well, I remember the day that Joe got back, which must have been Thursday.

Tommy walked us around the set, as he explained to Mr. Doucette what was wrong with the set, and that's when the black masking—we were talking about the black masking.

Q. So, physical notes were not given? A. More than likely not.

[435] Q. Now, this was not a one way discussion.

Was it in fact that Mr. Smith would point out the problems and there was a discussion on your part or an explanation on your part and Mr. Doucette's part as to why you did things the way that they were done? A. Yes.

You see, they were not there when it was done, so I would explain the reason why.

Q. Now, in your earlier testimony about the duties of the carpenter, you didn't mention that there was a house carpenter in every theater that you play, but in fact there is a house carpenter? A. Yes.

Q. You have to speak up. A. Yes, there is a house carpenter.

Q. In every theater? A. Of course.

Q. And that house carpenter is more familiar with the local members that come to the house? A. Oh, yes, for the—

Q. For the put in and take out? A. Yes.

* * *

[436] Q. In other words, Mr. Doucette will say I need four men, and then the house carpenter will say these four will go with the flymen, and— A. That's the actual running of the

show, not the put on of the show, but yes, if Joe needs this, he goes to the house carpenter and then he distributes the number of men to do the duty in the particular department, yes.

Q. And the same thing with the taking down and cleaning up, those things, the assignment of work is actually done through the house carpenter? A. Yes.

You tell the house carpenter, get this man to do this, like I would do to Joe in supervising him.

I would tell him what I need on a particular thing.

Q. Again, because a house carpenter was a man familiar with the local men, familiar with their skills and those kind of things? A. Yes, and the rules.

Q. And it was the house carpenter that would discipline the local employees and have them redo their assignments? [437] A. I don't understand that, "discipline."

Q. If you had—if Mr. Doucette had a problem with a local assistant, he would go to the local carpenter to have something done about that problem, either reassign the man or have the man do the work or even replace the man? A. Yes.

I guess that would be the way that he did it.

If I was unhappy about something, he would go to—I would go to Joe.

If I was unhappy about Joe, Jr. I would go to Joe, Sr. and give him the note and then—

Q. The things—but in conjunction with doing the show, Mr. Doucette would go directly to the man because he would have to show the men how the show was hung? A. He would have to show the men—well, yes, he's the one that knew how to hang the show and he would tell them what to do and where to put certain things.

Q. Now, in connection with the advance calls when Mr. Doucette was on an advance call, the company was paying for his flight; is that correct? A. I believe that they paid for the round trip and his hotel room.

Q. And also part of his work would be making necessary arrangements—adjustments with the ropes, especially with a hamphouse? [438] A. Yes, absolutely.

Q. Again, directing your attention to some of the notes that Mr. Smith gave you in Toronto, a great number of these notes had to do with the prop department; is that correct? A. Yes.

Q. And that certainly would be something that Mr. Doucette had no jurisdiction over? A. Well, that is not totally true.

Unofficially Mr. Doucette was looked upon as the head of all the departments.

You see, the most important department in the show, as a rule at least in our show is the carpenter.

Mr. Doucette was sort of—unofficially he was the head of everything.

Q. But Mr. Smith didn't give him any notes for props? A. No.

It would not be done that way. Only if the man was not performing to satisfaction, a carpenter, it would go to Joe.

Q. Mr. Doucette would not get any notes for the sound? A. Absolutely not.

Q. And certainly not for wardrobe or for the way that the actors were dressing? A. No. Neither for the actors, no. [439] Q. I assume that he had nothing to do with the performance of the actors? A. None whatsoever.

Q. Now, the performance of the actors was a great deal of—was the subject of a great of Mr. Smith's notes, wasn't it? A. Yes, it was.

Q. And in fact, to correct that, he held another rehearsal and several changes were made; is that correct? A. Yes, that's true.

Q. How much time did you spend with Mr. Smith discussing all the problems in Toronto, in terms of hours, if you can? A. It happened over a period of three days.

I mean, almost every waking moment that we were together we were talking about the show.

That's about all that we had in common.

Q. Was the major part of that discussion about the performance? A. Well, you can't separate it to just say that we discussed the performance, but we did discuss it, so I would say yes.

Actors are, of course, the core of the discussion, the major part of the discussion, yes, yes.

Q. Now, did Mr. Smith give you a note with respect to the cueing of certain scenes? A. Yes, the note—yes, he did.

[440] In fact, when a piece of scenery moved in I would give the cue to the flyman to see that it happened correctly, to see that the bloody thing doesn't come down on top of an actor.

Q. Yes, and that it happens the way that it's decided upon to happen, at the right time and speed, et cetera, et cetera? A. Yes.

Q. So that the timing of when a scene comes down, either too soon or too late, or your example, on top of an actor, that is determined by your cue; isn't it? A. Yes, whether I called it late or not, but whether it comes down on top of an actor is not my fault.

Q. But couldn't it be because you gave a cue too late? A. Not necessarily.

What if he is too late? That's his own stupidity.

I give a cue on a particular time, but if an actor decides to turn left instead of right and gets hit by the bloody piece, it's not my mistake.

Q. Let's concern ourself now with the flyman. A. All right.

Q. The flyman is going to watch you for his cue; is that correct? A. No, he watches a red light that I turn off.

Q. He watches a red light? [441] A. Yes.

I give a warning—crew ten—I give a crew warning, crew ten, berger flat in.

I turn a red light on. Now, as long as that red light is on they are at warning and they stand ready for the light to go off.

When that light turns off, the flat comes in.

Judge Sherman: What is a "berger flat"?

The Witness: It's an outside drawing of a berger palace in the '50s.

You saw it, it was a red brick thing with a big hamburger on it and a crown.

* * *

Q. (By Mr. Pollack) Would Joe Doucette, Jr., the flyman, have ear phones on so that he could hear your cue and see the light? A. No, he didn't use ear phones.

There were small speakers.

Q. So, first he would hear you, sort of a—hear you, and then— A. Yes.

Q. So isn't it a fact that even if he was not looking, even [442] if he was looking at a magazine, he would hear you, and then— A. Yes, but he couldn't hear the cue.

It's totally silent.

Q. He hears the warning and then he can look at the lights? A. Yes, yes.

Q. Now, I think you testified that in Toronto there was certain masking that was not hung? A. Yes, the up left piece of masking.

Q. Isn't it a fact that that masking was not even with the show, was not even carried? A. That I don't know.

The show was very new to me then.

Q. Isn't it a fact that to hang the masking the way that Mr. Smith wanted it, it had to be repaired in Toronto? A. Probably true. I didn't agree with Mr. Smith.

I thought that it was fine without the masking.

Q. Did you tell him that? A. Yes, I told him that.

I said that only four or five seats from the front could really see it.

Q. Now, in Toronto, Mr. Smith and Miss Fox did not tell you that Joe Doucette was going to be fired because of these problems in Toronto? A. No.

[443] We didn't discuss firing in Toronto, no.

Q. When did you first discuss with somebody from management the firing of Bob Weeden? A. Well, the very first person that I talked to about it was Eddie Davis over the telephone when I called him to ask him if Mr. Shearing and Waissman and Fox could come to Detroit and see the show.

Q. This was a telephone conversation? A. Yes.

Q. Were you in Toronto at that time or in Detroit? A. No, it was in Detroit, the first week in Detroit.

Q. Okay.

Would that be—the Exhibit shows that the Detroit run was April 23rd, so it was between April 23rd and April 30th? A. yes, approximately between that time.

Q. Now, you asked for the original sound man or the original designer to come out? A. Yes.

I asked Mr. Shearing, who is the man who designed the sound, to come out.

Q. And you asked Mr. Shearing to come out to make sure that your judgment was right on the sound? A. Yes.

Q. And did Mr. Shearing affirm your judgment about the [444] sound? A. Yes, he did, to Mr. Waissman, Miss Fox and myself that truly the sound was not being done to the standard necessary.

Q. And at that—after that discussion, did you go down and give Mr. Weeden his two weeks notice? A. No.

That was not my responsibility to do.

After Waissman and Fox made up their mind, after they got the input from myself and Mr. Shearing then they are the ones that set that into motion.

Q. Well, you were at the meeting with Mr. Antonelli, Mr. Vignale and Doucette? A. Yes, I was.

Q. How did you happen to be at that meeting? A. I was the main complainer. I had to be at the meeting.

It was my word. It was my doing that was causing him to be fired.

Q. Well, at sometime did you indicate to Mr. Weeden that it was your decision to have him discharged? A. It was pretty obvious in that meeting, yes that I was unhappy with his performance and wanted him fired.

Q. Well, prior to the meeting did you indicate to Mr. Weeden or somebody else that led to your being at the meeting, that it was you who was the prime mover in having Mr. Weeden discharged?

[445] Q. I don't understand the gist of the question.

Did I say something to Bob to that effect?

Q. Did you say something to Mr. Weeden or Mr. Vignale or Mr. Doucette that led to your being at that meeting? A. No. I didn't talk to Mr. Vignale and I didn't say to Bob, "I had you fired", no.

I mean, somebody else may have, like Mr. Davis or Mr. Antonelli.

Q. Who said to you to come to the meeting, please come to the meeting? A. No one said that, I had to be at the meeting.

Q. Who told you that? A. As I recall, it must have been Joe, Sr. because I never met Mr. Vignale.

He brought him into the theater and introduced me and said that we had to have a discussion over this, we can't let him be fired.

I'm not remembering the exact words, but it had to be Doucette, Sr.

Q. Now, did you report this to Mr. Davis? A. No.

Q. Did you at any time—there were several meetings with Mr. Vignale? A. There were three, as I recall.

Q. Now, did you report to Mr. Davis? [446] A. No, but I remember talking to Mr. Antonelli about—especially when the second meeting happened.

Q. And Mr. Antonelli told you that you were—that he was in telephone communication with Mr. Davis concerning these meetings? A. No, he didn't say that to me.

Q. Did he in some way indicate to you that he was reporting back to New York? A. No, he didn't say, you know, I'm reporting this back to New York.

Q. At the meeting, didn't he say, I have to get back with my New York office. I have to talk to my New York office, things to that effect? A. There was nothing to check. I don't know why Mr. Antonelli would have to say something like that.

Q. Well, there were changes made at that meeting, isn't that correct?

You wanted Mr. Weeden to leave the show immediately, but in fact he was kept through until January? A. Yes.

It seems as though there was some problem with his vacation pay.

Q. Well, there was a change as a result of this meeting? A. Yes, absolutely.

Mr. Weeden was let go.

Q. And Mr. Antonelli didn't say at all that he had to [447] check with Mr. Davis? A. Yes. I suppose that he must have.

He had to get permission to fire the gentleman.

Q. So he must have reported back? A. Yes, but what he reported back, I don't know.

Q. Okay.

Now, you never told Mr. Davis or Mr. Antonelli that Joseph Doucette, Jr. could not perform as a carpenter, did you? A. Yes, I believe that it was Mr. Waissman.

Q. When was that? A. Somewhere around Detroit.

We were talking about ifs and buts and so forth, and you know, the opinion was rendered.

Q. Didn't you testify earlier that in your conversation with Mr. Waissman there was no discussion about— A. No.

Q. —replacement of Mr. Doucette? A. No.

I testified that in their hotel room there were no discussions, but they were there three or four days and we talked a lot, at dinner, at breakfast.

I mean, that particular meeting, when I asked at that particular meeting that Mr. Doucette, Sr. be let go we didn't discuss Mr. Doucette, Jr.

[448] Q. Now, Mr. Waissman never told you any specific time that Mr. Doucette would be discharged, did he? A. No, he did not.

Q. And in fact, really what he did was calm you down and say, we'll see about it.

We'll look into it. A. Well, I don't know if that's calming me down.

He said, "Yes, we'll look into it."

I was not hysterical and needed calming down.

Q. Now, I'm asking you another question.

He said, "We'll look into it. We're not going to fire him"? A. I'm sorry, I don't remember the exact words that he used, I don't remember the exact words that he used, but I left the meeting knowing that this—Mr. Doucette would be released.

Q. And you left knowing that Mr. Doucette would be discharged? A As I left that meeting, I understood that's what was going to happen.

Q. Now, you say in Denver Mr. Doucette told you that he thought that he was going to be discharged in Los Angeles. A. I think that it was in Denver.

I'm sorry, I can't remember specifically.

Q. And Mr. Doucette in that same conversation men-

tioned [449] that—he felt that he made a mistake in getting involved in Mr. Weeden's grievance or Mr. Weeden's affairs? A. I remember him saying that he made a mistake by representing Bob at the Union meeting.

Q. Was Mr. Weeden in the same conversation that Mr. Doucette said that he thought that he was going to be discharged?

Didn't he mention Mr. Weeden? A. No.

As I remember the conversation it was very passive.

It was not that we sat down and had a discussion about Joe's future.

Q. Well—

Judge Sherman: Let him finish his answer.

Mr. Pollack: I'm sorry.

Q. (By Mr. Pollack) Could you please finish. A. It was like in the course of a conversation there would be a lot of "ifs" and speculation, which we did a lot of on the show.

We had small talk all the time and it seemed—as I remember it, if I'm remembering correctly, it just came out, I'll probably get fired in L.A., because other people do it all the time. It was not that Joe was going to be the only individual that it was going to happen to.

It's like the practice in the theater. Why pay a road [450] man a high salary when you can get a local man to do the same thing and I understand that David Merrick did this all the time, and this is how I remember the conversation.

Q. What I'm trying— A. Yes, I know.

Q. You admitted that other things were discussed in this conversation? A. Lots of other things.

Q. Lots of other things? A. Yes.

Q. And I'm trying to find out if Mr. Weeden's discharge was one of those things that was also discussed in this conversation? A. Well, I don't remember if he gave me a reason for Mr. Weeden's discharge.

Q. Let's talk about whether or not Mr. Weeden's and Mr. Weeden's discharge was mentioned in this conversation? A. I honestly don't remember.

Q. It could have? A. Yes, many things were discussed.

It could have been sure.

Q. But in this conversation Mr. Doucette's tenure with the company was discussed.

Wasn't the tenure of other employees or the possibility of other people being discharged, wasn't that mentioned in [451] that conversation? A. Yes, and I think that we even discussed my tenure, as a matter of fact.

Q. So your answer is yes? A. Yes.

Q. In that conversation you never told Mr. Doucette that you had asked that he be terminated? A. No, no.

Q. And you ever, in that discussion, told him anything about laziness on his part or on his son's part? A. It was a friendly conversation.

Q. There was no mention about Mr. Doucette, Jr. being terminated in that conversation? A. No.

Q. Again, speak up. A. I'm sorry, no.

I didn't know—I mean, I didn't discuss termination with Joe at anytime.

Q. Now, after your conversation with Mr. Waissman, you didn't hear anything about the possibility of a discharge of Mr. Doucette, did you, until after Mr. Doucette's termination? A. Like in between Detroit and Los Angeles, I didn't hear any rumors that it was going to happen.

Q. You didn't hear from Mr. Waissman or Mr. Davis or Miss Fox in Cincinnati or Denver that Mr. Doucette was going to [452] be discharged on June 13th? A. No.

Nobody called me and said that it was going to happen on so and so date.

Q. And no one said, "Mr. Marino, look for a replacement"? A. No.

It's not my responsibility.

Q. Well, isn't it you that called the local union in Los Angeles to get a replacement for the Doucettes? A. No, it was not me.

It was Mr. Antonelli I believe. That's part of his responsibility.

Q. June 19th you didn't contact Mr. Burnhardt of Local 33? A. No.

I don't even know a Mr. Burnhardt.

That probably was Donald, because that was part of his job.

Judge Sherman: By "Donald" do you mean Mr. Antonelli?

The Witness: I'm sorry, Mr. Antonelli, I'm sorry.

* * *

Q. (By Mr. Pollack) One last question concerning your conversation with Mr. Waissman. A. Yes.

[453] Q. When you asked that Mr. Doucette be discharged in that conversation, you never mentioned the "Edsel panel" or the repairs to the set, did you? A. Well, we had to, I think because it was a very long meeting.

We discussed so many things besides Mr. Doucette, and I'm sure I must have referred to those particular items as a reference or as an example at a particular time.

It's kind of hard to say. I cannot talk about the show without talking about specifics about the show.

Q. But earlier you testified that you didn't agree with Mr. Smith's assessment? A. No, I didn't.

I don't understand what one has to do with the other.

Q. Well, you didn't offer as a reason for his discharge the Edsel panel? A. No, it was not a specific that I wanted him discharged for.

It was kind of a general thing, and I was not referring back, necessarily to Toronto.

Q. Well, after the paint call, did your dissatisfaction with Mr. Doucette lessen? A. No.

In fact, it increased it.

In that paint call they did the stupidest thing.

[454] They painted the escape stairs, things that the audience cannot see, and this was done on a holiday, too.

Q. That was at the direction of Mr. Smith? A. Mr. Smith, he was totally surprised by the paint call too.

It was someone else besides Tommy and I.

You see, I had to okay all bills for money spent and when I came to work and I saw that, I refused to pay the bill.

It could have waited until Saturday or Monday, but he didn't think so, but anyway, I didn't okay the paint call, I was furious when I found out that it happened, and it was on a holiday, too.

Q. Did you find out at some point in time that it had been okayed by the supervisor? A. Yes.

When I complained to the supervisor and I told them—called them up and said that I refused to pay for the paint call.

Q. And did he say who authorized it? A. No, he didn't.

Q. Well, what did he say? A. Actually he didn't say. I didn't know that it was authorized until Antonelli told me.

Q. And at the time that Mr. Antonelli told you, did he say [455] that it was at the request of Mr. Waissman? A. Yes.

He said that Miss Fox was unhappy and because of that, the painting call was made.

* * *

RE-DIRECT EXAMINATION:

Q. (By Mr. Adelman) After the Toronto performance, did you know that Miss Fox was upset? A. Yes.

Q. Whose show is Grease? A. It's Waissman's and Fox's. They are the producers.

It's their show.

Q. After you explained—did you explain to Miss Fox that you didn't agree with some of the things that she was complaining about? A. Well, actually not to Miss Fox directly, through Tommy Smith, who conveyed them to her.

I didn't talk to her directly that I necessarily disagreed with some of the corrections that she wanted to make.

It was just me and Smith.

Q. And as far as you know, Miss Smith was upset with how the show looked?[456] A. Yes, very upset about how the show looked, yes.

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[457] DONALD ANTONELLI called as a witness, having been first duly sworn in by Judge Sherman, was examined and testified as follows:

Judge Sherman: Please be seated, and give your name and address for the Reporter, and spell you name.

The Witness: Donald Antonelli, A-n-t-o-n-e-l-l-i, 35 West 92nd Street, New York, New York 10025.

Judge Sherman: All right.

DIRECT EXAMINATION

Q. (By Mr. Adelman) How many years have you been in the theater? A. Over 12 years.

Q. And are you currently employed? A. Yes, I am.

Q. With whom? A. I'm employed at the Minskoff Theater.

Q. What is the name of the production there? A. Bette Midler's on the Half Shell Review.

Q. And what is the nature of your employment there? A. I'm the manager of the theater.

Q. Would you give us your employment history, going back [458] in time? A. All right.

Prior to the Minskoff Theater I was employed by Grease, the National Company of Grease.

Prior to the National Company of Grease, I was employed with the National Company of Applause.

Prior to Applause, I was employed with the National Company of Fiddler on the Roof.

Prior to Fiddler on the Roof I was—all right, I think that's enough.

Q. Were you a company manager in all these? A. Yes, I was.

Q. When did you first become associated with the production of Grease? A. December, 1970—excuse me, December, 1970 or '71.

* * *

A. 1972, I guess that it was, December.

Q. And in what capacity was that? A. Company manager.

Q. Would you define for us the responsibilities and duties as a company manager?

Mr. Pollack: Your Honor, can we limit this to the Grease show?

[459] Judge Sherman: I think that's an appropriate limitation.

Q. Would there be any difference to the duties and responsibilities as a company manager on the Grease show than on any other show in which you were a company manager? A. No, but at the moment, I'm a theater manager, presently.

Q. Would you define for us the responsibilities and duties the company manager on the Grease show has? A. I was responsible for all of the front of the house transactions.

Q. Would you elaborate a little so that we can understand exactly what you mean by that? A. All right.

The front of the house being the box house, to count up at the end of the evening the finances of the company, to include payroll, taxes, transportation, perdiems, whatever.

Q. Did you take care of housing? A. Yes.

I book all the hotels for the company.

Q. Do you take care of transportation? A. I book the transportation for the company.

Q. Do you know the Doucettes? A. Yes, I do.

Q. When did you first meet them? A. I met them—the very year that I joined the show.

[460] Q. That's the Grease Show? A. Yes.

Q. You did not know them before? A. No, I did not.

Q. Did you have any responsibility in determining how many stage hands were needed for the run of the Grease Show? A. Not—not primarily, no.

The carpenter would tell me how many men that he would need in each department to fill the yellow card.

I would then immediately compare with him or if I disagreed, then I would then call the General Manager in on it, but basically we knew—I would know what he needed and what he would need is usually what he would ask for.

Q. Is that what happened with regard to the number of stage hands with Grease? A. Yes, I would say so.

Q. Did you discuss that with Mr. Doucette, Sr., that is the number of stage hands that he would be needing in each City? A. No, because the number of stage hands does not vary from City to City.

Q. In this occasion Mr. Doucette, Sr. came to you—came to you and said we need so many, and you said okay, and that was the number of men that were used in each city.

[461] Is that basically it? A. Yes, that was basically it.

Q. Were you aware of the functions of the production carpenter on the show?

In other words, how involved were you with Mr. Doucette on the road show? A. Well, really when you speak of involvement, I was only involved with him on a financial basis.

If he needed an allocation for—to purchase something or to—

Q. But his day-to-day functioning was not within your responsibility? A. No, no, it was basically within the stage manager's responsibility.

Q. Were you aware that Miss Fox, Miss Birch and Mr. Smith were coming to Toronto to review the matinee performance on April 18th? A. I think I was. I really don't remember exactly if I knew they were coming that particular day, but I knew that they were coming to Toronto.

Q. Do you know if there was any particular reason why the show was being reviewed at that particular time? A. I believe—it was probably a periodic visit or it may have been a visit that was promoted for someone within the company.

[462] Q. But it was not unusual— A. No, it was not unusual for the producers to visit the production.

Q. Did you attend the matinee of April 18th, do you recall? A. Yes, I was more than likely there.

Q. Do you specifically recall the matinee at which Mr. Smith, Miss Fox and Miss Birch attended? A. I specifically recall that they were there, but I don't specifically recall whether I was there with them or not.

Q. Okay.

Were you aware of their reaction to the show that they saw at that time? A. Yes, in part.

Q. Had you—had you become aware, if you can recall? A. I'm trying to think.

Well, when it would come to a situation like that, no one would come to me directly.

Being the manager of the company and being aware of anything that was happening in the company, I was just aware of it.

* * *

[463] Q. (By Mr. Adelman) Was Mr. Doucette discussed—were your involved in any discussions with Miss Birch and Miss Fox and the others with regard to the way that the show looked in Toronto? A. Well, there is something—I recall something to do with Maxine, Miss Fox, the painting and calling Eddie Davis and getting him on the phone.

It's vague. She had me call Eddie Davis because she was terribly unhappy about how the set looked.

It had to be repainted.

Q. So that— A. She wanted it painted.

I recall having made a telephone call to Eddie Davis in New York to discuss the situation.

Q. Was there any discussion about Mr. Doucette, Mr. Doucette, Sr. at all that you can recall? A. Well, naturally, yes, he was discussed.

Q. Was he there at the time that Miss Fox, Miss Birch and Mr. Smith were there? A. I don't think so.

Q. Do you know where he was? A. Well, if he were absent, I think the only reason that [464] he would be absent would have been to be in Detroit or another city on an advance call.

Q. Do you recall any discussion about the length of time he would be on this advance call? A. I don't specifically recall the length of time at that particular time, but generally his stay would be a day or two.

Q. All right.

Did you in fact call Mr. Davis with regard to this paint call that you testified to? A. Yes.

I believe that I did call him, yes.

Q. And what did he say to you? A. To get it done.

Generally when the producer wants it done, it's done.

Q. And Miss Fox— A. She was one of the producers.

Q. Now, were the deficiencies, the paint job was done by the time that you got to Detroit, is that correct? A. Touch up job, yes.

Q. And did Mr. Marino speak with you about that paint job, the expense involved? A. I think—I really don't remember exactly the conversation, verbatim.

[465] We wanted to stall the job as long as possible, I believe, so that when we got to Los Angeles, we were going to hire a senic designer to come in and do it again so that it would look as fresh and as new as it did when it left.

Q. But why wasn't that done? A Well,—

Q. Why didn't you wait until you got to Los Angeles? A. Well, we did what the immediate situation called for.

Q. What Miss Fox wanted? A. Yes.

Q. Now, did there come a time when you learned that Doucette was going to be discharged? A. I just felt it.

I just knew it.

Again, knowing everything that goes on in the company and knowing the general attitude, I just knew that Eddie Davis was unhappy with Joe and wanted to get rid of him, yes.

* * *

[466] Q. (By Mr. Adelman) To the best that you can, can you tell us when and under what circumstances the conversations took place with Mr. Doucette?

Judge Sherman: And also what they were.

Mr. Adelman: Right

Q. And also what was said.

The Witness: When you ask for times and specifics, your Honor, it's very difficult.

You know, I cannot be that specific on the times and I cannot be specific on the details.

I just know that I was reporting daily to my supervisor, as I did—I called him daily no matter where I was in the United States, and through our conversations, there were many times that he just expressed his displeasure with the Doucette Family and I

just really cannot be that [467] specific but there were many times when he expressed his displeasure prior to Toronto and prior to Detroit.

Q. (By Mr. Adelman) Perhaps I could ask it this way and get back to that.

Were you involved in the Weeden incident? A. Yes.

I was called to sit in on the meeting.

Q. Did you read the summary of the Administrative Law Judge as to what occurred at those meetings? A. Yes, I did.

Q. Was it basically an accurate, to the best of your recollection, summary? A. Yes, I would say that it was a very good account of what happened.

Q. Now, prior to this—prior to these grievance meetings in Cincinnati, can you recall any specific discussion with Eddie Davis with regard to Mr. Doucette, Sr.'s tenure—continue employment at the company? A. Would you ask me that again, please?

Q. I'm just trying to get you in perspective, in point of time. A. All right.

Q. Prior to the Weeden incident in Cincinnati, that is the grievance, can you recall any conversations that you had with Mr. Davis regarding the termination or his feeling [468] about Mr. Doucette, Sr.? A. Again, I would be unable to give you a specific date and a specific time, but—I can tell you that there were conversations.

He was unhappy with his expenditures, for example.

We discussed those many times.

Just basically he was unhappy. He wanted to get rid of Joe Doucette. He did like him.

He didn't want him.

I cannot give you a specific date, but—if what you're saying, certainly—it certainly was before the Weeden incident.

It had been discussed before the Weeden situation.

Q. Did you speak to Mr. Davis about the Weeden situation, about the grievance meetings that Mr. Doucette attended? A. I told him that there was a meeting.

Q. Did you tell him whether Mr. Doucette was in attendance at the grievance meetings? A. I probably did, yes.

Q. Did Davis have any reaction to the fact that Mr. Doucette was sitting in at the grievance meeting? A. I don't—I don't—I don't think that there was any unusual reaction, no.

Q. Were you surprised that Mr. Doucette, Sr. was sitting in on the meeting? [469] A. No, I was not.

Q. Why weren't you surprised? A. Well, he was "Poppa Joe". He was a friend of the family.

He was a part—besides being the head carpenter and everything back there, I thought that it was a second nature for him to be there, you know.

Q. Now, could you tell us when you learned the date that Doucette, Sr. would be discharged? A. Well, actually the day that we—the day that Eddie Davis finally did call me in Los Angeles, that was really the official day that he said, "Donald, Poppa Joe and his son, let them go immediately."

Q. Did he say anything else to you in that conversation that you can recall? A. No.

It would—

Q. What—do you recall what day of the week that it was that he called you? A. Oh boy.

Q. Was it the same day that you told Mr. Doucette, Sr. that he had to be let go? A. Yes, absolutely.

It was the same day, absolutely.

You know, it was the same day, but I don't know what [470] day that is—it was opening day.

I think that it was in Los Angeles or the day before, the opening day.

I don't know specifically what day that it was.

If you could help me, whether it was a Monday or a Tuesday, it might help me.

I don't know.

Q. Well, I think the record shows that it was a Sunday, but I don't know that that's—that that matters very much.

Mr. Pollack: Your Honor, I don't think it's an issue, but to save trouble, we'll stipulate that it was June 17th, a Sunday.

Mr. Adelman: Fine.

The Witness: It could have been, but it would seem unusual that it would be a Sunday afternoon.

It would be, the normal time to discharge a person under those circumstances or under any circumstances would be the start of the week, which would be on Monday—

Q. Right. A. —but I don't know.

Q. Well, the week started Monday, and you, apparently, I think that—there is no question that it occurred on Sunday. [471] A. Yes.

Q. That would be right before the start of a week. A. All right.

Q. Did you know who was going to replace Doucette, Sr.? A. No, I didn't know immediately.

Q. Did Eddie Davis mention that to you in that conversation? A. No.

It would be my job to see that a replacement had been made until one could be—the immediate situation called for me to replace Joe Doucette, and then later on, at another time, Mr. Davis would have sent out a replacement from New York or from wherever.

Q. Did you have a discussion with him regarding who Mr. Doucette's replacement was going to be? A. I don't recall.

Q. Does the name John Gallagher mean anything? A. Yes. He ultimately replaced Joe.

Q. Do you recall when that was, roughly?

Was it immediately thereafter? A. No, it was not immediately thereafter.

I used a local person immediately therafter.

Q. While you were using the local people, did you pay John Gallagher a salary? A. No, not—I paid a local man the salary.

[472] I didn't pay salaries for the same job.

Now, when Gallagher arrived, there may have been a day overlap, but I don't recall that.

Q. When did Davis indicate to you when Gallagher was coming, do you recall that? A. It was to move us out of L.A., and just prior to moving us out of L.A. and into Chicago, which would be toward the run in Los Angeles.

* * *

Q. (By Mr. Adelman) Do you recall approximately—how long did this show run in Los Angeles? A. 12 or 13 weeks.

That would bring us to around the beginning of September, maybe, yes, the second week in September, something like that.

Judge Sherman: Oh, thank you.

By the way, the replacement that you were supposed to get for Mr. Doucette, was it ever contemplated that [473] that would be the permanent replacement to be used when the show went on the road again?

The Witness: No, it wasn't, no.

Judge Sherman: You were supposed to get a temporary replacement?

The Witness: Well, I was to get a replacement in there, but the union—

Judge Sherman: But it was not contemplated that they would be permanent and stay with the company?

The Witness: If you assign a man to the contract and if he wants to go on with us on the road, then he has the perogative to go on the road with us if he wants to, but I believe the situation there, the man wanted to stay in Los Angeles.

Judge Sherman: You knew that when you hired him?

The Witness: Yes.

Judge Sherman: Did you tell Mr. Davis this?

The Witness: It was just common judgment.

Q. (By Mr. Adelman) Did the local replacement have the ability to move the show? A. We didn't think so. The local replacement worked the show.

We didn't think that he could move it to Chicago.

Q. Now, if I may, just to shorten the record, did you read the summary of events as testified by Mr. Doucette [474] regarding your conversation with him when you told him that he was to be discharged? A. Yes, I remember reading that.

Q. Is that basically how it occurred? A. Yes.

Q. Did you suggest that he call Eddie Davis to find out more about the details of the discharge? A. Well, if he wanted any further explanation beyond what I could give him, yes, I would have suggested that he call Mr. Davis.

* * *

CROSS EXAMINATION:

Q. (By Mr. Pollack) Okay, Mr. Antonelli, you testified that the yellow card was filled out by Mr. Doucette. A. Yes.

Q. And then that card, with the same figures, would proceed to every new town and the same amount of employees, stage hands, as you might refer to them, would be used in each town that you went to; is that correct? A. Yes, that's right.

Q. Now, Mr. Doucette told you and discussed with you the numbers that were to be put down on the card; is that correct? A. Most probably he did, that's right.

[475] Q. And he also discussed the number that would be put down on the card with Mr. Davis and the set designers; is

that correct? A. Well, I'm sure that he would have discussed it with Mr. Davis, but I'm not sure whether he would have discussed it with the scenic designer.

Q. Well, Mr. Davis being somebody connected with the show, could have caused how much—the details of the show, what the cost would be, et cetera? A. Yes, but in my experience, the scenic designer is not involved in this sort of a decision, only if Mr. Doucette felt that certain things couldn't work and within the specified time, he then might ask myself or the General Manager to elicit the scenic designer if he could take something away from his design.

Q. Because of the cost involved, the amount of time taken to set up the show was of great concern to Mr. Eddie Davis; is that correct? A. Yes, I would say so.

Q. And were you aware that there was a great amount of discussion between Mr. Doucette and Mr. Davis regarding the amount of time and the cost of setting up the show? A. Say that again, please.

Q. You were aware of the fact that there were discussions [476] between—taking quite a bit of time—between Mr. Doucette, Sr. and Mr. Davis with respect to the cost and time involved in setting up the sets each time they would go to a city? A. Yes, there were discussions, I was aware of discussions.

Q. Now, you were in the show from the first city, Boston, Philadelphia, New Haven— A. Yes.

Q. And you knew that one of the major concerns, of Mr. Davis, yourself and Mr. Doucette, Sr. was to do the "put-in" as you call it, more rapidly in order to cut costs, time and money? A. Yes.

Q. Is that correct? A. Yes, I know that.

Q. You have to say that.

The Court Reporter has to put down what you say, and she can't put down a shake of your head if your answer is yes, say yes. A. Yes.

Q. Thank you.

Now, when Mr. Doucette would make an advance call in Toronto or Cleveland or Detroit, for example, he would tell you in advance that he was going; is that [477] correct? A. Yes.

Q. And you would, at some point in time, give him a check to reimburse him for his transportation costs and perdiem while he was on that advance call? A. At some point in time, yes.

Q. That would usually be after the advance call you would reimburse him afterwards? A. When he would return his bills to me, yes.

Q. But before that, he would tell you what City that he would be going to, right? A. Yes.

Q. And you knew what hotel that he was staying at? A. In most cases, yes.

Q. And you also knew which theater? A. Absolutely which theater that he was expected to go to.

Q. All right.

And that would be true for the entire time that he was employed and includes his advance call to the city of Detroit? A. Yes.

Q. Now, you testified that—that the company—I assume that you were in on this discussion—this decision—wanted to wait with the paint call until you [478] got closer to the time of the Los Angeles opening so that the—it would be fresh for the opening in Los Angeles; is that correct?

That was the original intention? A. I don't—the question, I don't quite follow you.

Q. Okay.

Prior to—there was a paint call in Toronto; is that correct? A. Yes, we did, right.

Q. Now, prior to that, your being told that there would be a paint call in Toronto, it was your understanding and I assume that that came from talking to Mr. Eddie Davis, that

the paint call would wait until just prior to the Los Angeles opening? A. I don't understand what you are—I don't understand what you are saying.

Q. Wasn't it the original plans of the Grease Company to have a paint call just prior to Los Angeles, the Los Angeles opening, to retouch and fix up the scenery and props? A. We did intend to retouch the scenery and props prior to the Los Angeles opening, yes.

Q. And then, because of the dissatisfaction of Miss Fox, that paint call was held in Toronto, it was moved [479] up and done in Toronto? A. In part it was, yes.

Q. Now, you testified that you would report to Mr. Davis or you would be in telephone conversation with Mr. Davis in New York almost everyday? A. That's correct.

Q. And you're also testifying that in some of the conversations, that he expressed dissatisfaction with Mr. Doucette? A. Yes.

Q. Didn't he also express dissatisfaction with other people involved in the production? A. I don't know many other—I don't know of many other people, no.

Q. He expressed dissatisfaction with Mr. Marino? A. No, I don't recall that at all.

Q. Wasn't Mr. Marino discharged for about a half an hour during one tour? A. Well, if it was for a half hour, maybe so, but I was not aware of it, sir.

Q. In some of your conversations with Mr. Davis, did he express any dissatisfaction with Mr. Weeden? A. Yes, he did, he did.

Q. And he expressed unhappiness with the prop man? A. I don't recall him being unhappy, I don't recall [480] no.

Q. Well, didn't he, in many of these conversations express general dissatisfaction with many of the people? A. I'm sorry, but "many of the people" encompasses a lot of people.

Q. He did express dissatisfaction, unhappiness, with other employees other than Mr. Doucette? A. I don't really know.

I don't want to be specific there.

I don't know whether he expressed—I mean, I don't know what it has to do with Joe.

Q. Well, you're not to do that.

Just answer my questions.

In the many conversations that you had with Mr. Davis during the tour, it wasn't just Mr. Doucette that he expressed unhappiness with, he mentioned in different telephone calls and different times, he mentioned unhappiness with other people and other employment of the company?

Mr. Adelman: I don't know if that's a question or testimony.

Judge Sherman: It's a question on cross examination.

Do you understand the question, Mr. Antonelli?

[481] The Witness: I understand what he is saying, but he never discussed with me the unhappiness of other people, and if I knew exactly what other people that you are talking about, we have many other shows going, and if he talked to me about being unhappy with other people, I don't know what people that you mean.

I don't know what you mean.

Q. (By Mr. Pollack) Other employees working on the tour that you were working. A. I was only aware of him being terribly unhappy with Joe Doucette.

Q. Did he say at that time he was going to fire him? A. I don't recall that specifically, but I recall him saying, "One of these days, I'm going to get rid of him."

Judge Sherman: Do you know if he expressed any views about Joe Doucette, Jr.?

The Witness: No, I don't recall him specifically mentioning Joe, Jr.

* * *

Now, do you remember telling Mr. Davis that Joe Doucette, Sr. was at the meeting held with the IATSE representative in Cincinnati, IATSE? [482] A. I lost the train of thought.

Q. Do you recall telling Mr. Davis that Mr. Doucette, Sr. was at the meetings with Vignale held in Cincinnati concerning the Weeden discharge? A. I—more than likely mentioned it during the course of our conversation, but not as a point of reporting that Joe had been in attendance.

Q. You discussed the entire meeting? A. Yes.

Q. And did Mr. Davis ask you why Doucette was at that meeting? A. I don't believe that he asked me why, no, sir.

Q. Did he ask you who called—did he ask you who called Mr. Vignale in the first place? A. I don't recall him asking me that specific question, no.

Q. Do you recall any mention by you or Mr. Davis that it was Joe Doucette, Sr. that called the Union rep, Mr. Vignale? A. No, I don't have any recollection of that.

Q. There could have been some discussion on that point and you just don't remember the discussion, is that what you are saying? A. No.

I think the fact was established that Mr. Vignale [483] was there.

I don't think—I or—at anytime discussed why Joe was there or why Mr. Vignale was there, or who called Mr. Vignale or who called the meeting.

The immediate situation was what was going on.

Q. Now, you say that the day that Mr. Doucette was discharged or that both Doucettes were discharged, you received a telephone call from Mr. Davis directing you to discharge the Doucettes, is that correct? A. That's right.

Q. Did Mr. Davis say why you were not to give two weeks notice? A. He did not instruct me not to give two weeks notice.

He instructed me to pay the men and let them go immediately.

Q. Well, Mr. Weeden was not paid immediately, he was given two weeks notice; is that correct? A. Yes, that's correct.

Q. Could you explain to me the difference as to why the Doucettes were paid off and why Weeden was given two weeks notice? A. Well, I can only speak from my own experience.

Q. Well— A. Well, I cannot speak for my—I cannot account [484] for Mr. Davis' actions, sir.

Q. In other words, Mr. Davis gave you no explanation. He just said, "Pay them off"? A. Yes, that's right, pay them off.

Q. Okay.

And prior to that conversation, Mr. Davis had not directed you to see or look for a replacement? A. No.

Q. Now, you sought a replacement from the Local Union Hall; is that correct? A. Yes.

Q. And when did you get a replacement for Joe Doucette, Sr.? A. I believe that it had to be the same evening I called 53, is that it?

Q. 33. A. Yes, 33.

Q. Well, isn't it a fact that it was two or three days before a new—a carpenter, Henry Mizzaro, and a flyman, Herbie Hughes was called from the Local Hall; is that correct? A. It could have been three days, but it seems to me that the union would require us to have someone there immediately.

Now, I don't remember whether they were—that [485] they were able to fullfill my needs. I don't remember.

Q. And the two men that I mentioned, the carpenter from the Local Hall and the flyman, weren't they brought to you—introduced to you by the—by a business agent of the Local Union? A. Either by him or the house carpenter.

Q. When is the first time that you learned that Mr. John Gallagher was hired as the—as a carpenter? A. Again we're

going to specific dates, and I can only say that it was just prior to his arrival.

Q. Which was sometime— A. Sometime in September.

* * *

RE-DIRECT EXAMINATION:

* * *

[486] Q. (By Mr. Adelman) Did you speak to Mr. Davis everyday? A. Practically everyday.

Q. Did you know Mr. Davis before you worked on the Grease Show? A. Yes.

Q. How many years have you been—have you had a working relationship with Mr. Davis? A. Right, it was December of 1971 when I first went to work for Theater Now, December, 1970.

Q. You were employed with Theater Now? A. Yes.

Q. Who paid your pay checks? A. I signed my own.

Q. What was the name of the account? A. The manager's account, the Grease National Company, and I signed the checks for the entire company.

[487] Q. Of your own knowledge, do you know why Mr. Doucette, Sr. was fired? A. From what I can gather in my own mind, in my own thought process, it's—it was just general dis—dislike between Eddie Davis and Joe Doucette, Jr., Sr.

* * *

Q. What made you think that?

Did you speak to Eddie Davis everyday? A. Yes.

Q. Was Mr. Doucette, Sr. the subject of your conversation? A. Not everyday, no.

Q. But on occasion? A. Yes, on occasion, yes.

Q. What made you think that—that the reason for Mr. Doucette, Sr.'s discharge was Mr. Davis' unhappiness with him?

Mr. Pollack: I object.

Judge Sherman: I'll allow the question.

A. Well, I cannot answer that, you know, I just don't know.

[488] I do remember something very specific, and that was at the beginning of the run when we were hanging the show, it would take X number of hours to hang the show, and there was a time when I was told that we could get it in—could we make it in by that time and—words to that effect.

Well, what I am trying to say is that for money they could get the set hung in eight hours, but without the bonus it was pretty hard to do and Mr. Davis said gee, without the bonus I cannot get the show up.

Q. Were there any other reasons for his unhappiness? A. He thought that Mr. Doucette's expenses were out of line.

Mr. Pollack: I object.

Q. What is the basis for that statement? A. What is the basis?

Judge Sherman: Yes.

The Witness: Mr. Davis had reason to suspect that Mr. Doucette's bills were inflated.

Judge Sherman: Did Mr. Davis tell you that?

The Witness: This is in conversation with him.

Judge Sherman: Mr. Davis told you that he thought that Mr. Doucette, Sr.'s expense bills were inflated?

The Witness: I'm trying to give you—you've asked me for situations, and I'm trying to recall conversations that—I wasn't—when a bill was submitted, he would [489] express his unhappiness over his expenses.

Judge Sherman: All right.

The Witness: He would express his unhappiness over the amount of time that it would take to get the show up.

He would say something like, "We cannot get it up in eight hours under normal time, but if I give them a bonus they'll get it up."

He was expressing his unhappiness with the situation.

In other words, he knew that the set really could get up in eight hours, but without the bonus it could not.

Mr. Pollack: I'm objecting not to the conversation, but the way that the witness had concluded Davis' thoughts.

Judge Sherman: Well, I'll receive it for showing Mr. Davis' statements to the witness, and that he made certain conclusions on the basis of those statements.

* * *

[490] Judge Sherman: Mr. Adelman, look, you have to establish a basis for the witness' conclusions.

The witness' opinion as such makes no difference since this witness did not participate in the discharge decision.

Anyway, if he has any basis as to why they were discharged, he can relate the factual basis.

Q. (By Mr. Adelman) Did Mr. Davis ever relate to you the reason for Mr. Doucette, Sr.'s discharge? A. Well, I knew as I said earlier, that he had been contemplating the discharge of Joe Doucette.

He wanted to get rid of Joe many, many other times, but I think what finally broke the Camel's back, there was something to do with the cost of some black legs in Los Angeles, the houseman gave me a specific price, and then Joe Doucette, Sr. reported a much higher price and I think that Eddie said to me, "That's it, Donald, let him go, fire him, pay them off."

Q. Did the Weeden incident have anything to do with the Doucette discharge?

[491] Judge Sherman: Mr. Adelman, please don't do that.

Mr. Adelman: I think that Mr. Antonelli is in a position to state he has—he's testified that he spoke to Mr. Davis everyday, and I think he's in the position to state whether Mr. Davis ever told him whether the reason for the discharge was the Weeden grievance procedure.

Judge Sherman: That's the question that you asked him?

Q. (By Mr. Adelman) Did Mr. Davis ever state to you that the reason for Doucette's discharge was because he attended the Weeden grievance meetings? A. Definitely not.

* * *

RE-CROSS EXAMINATION:

Q. (By Mr. Pollack) Mr. Davis never told you that the reason why he discharged Mr. Doucette wasn't the Weeden grievance either, did he?

Mr. Adelman: Could he please rephrase the question?

Judge Sherman: Why?

Mr. Adelman: Because I don't understand it.

Judge Sherman: I think that that's fair.

If it's not clear to Mr. Adelman, then maybe it's not clear to the witness.

Go ahead.

Q. (By Mr. Pollack) Is it correct that he had never [492] told you that he did not fire Joe Doucette, Sr. and Jr. because of the Weeden grievance? A. He's never told me that, no.

Q. Now, you just brought up an incident about black legs in Los Angeles. A. Yes.

Q. When did this occur? A. You mean when did this occur?

Q. Yes.

You just testified that Mr. Davis was upset about an incident about black legs in Los Angeles?

Now, when did this occur? A. Well, it would have occurred upon the day of our arrival, and the day of the take-in.

Q. And did Mr. Davis tell you specifically that was the reason for the Doucettes' discharge? A. No, he didn't specifically tell me that was the reason.

Q. Then your testimony just now was an assumption that that's why Mr. Davis told you to pay off the Doucettes? A. No, I don't assume any of that at all.

Q. So then your mentioning the black legs was just something that occurred to you, another source of Mr. Davis' dissatisfaction with the Doucettes? A. It was just another source of Mr. Davis' dissatisfaction, [493] yes.

Q. Isn't it a fact that Mr. Davis didn't receive the bills for the black legs until the Doucettes where discharged? A. Well, I don't know, but I know that it was discussed prior to the discharge.

Q. Was it discussed with Joe Doucette, Sr.?

Mr. Adelman: By whom?

Mr. Pollack: By the witness.

A. Did I discuss the amount of money?

I don't recall, but I'm sure that I must have, of course I must have.

Q. Well— A. He would have been the principal—

Q. You discussed the amounts because you had to authorize the amounts; is that correct? A. Yes.

Q. But did you tell him that the amounts were too high? A. I don't recall that I told him that they were too high.

My conversation was why did I get one figure from one man and a different figure from you.

Q. And did you get an explanation? A. I think that the explanation was that a mistake was made.

Q. Did you relate that to Mr. Davis? [494] A. It was out of my hands at that time.

Q. What do you mean it was out of your hands at that time?

Mr. Doucette was still employed? A. Once I turned it over to the General Manager, when I go to the General Manager, then I then turn it over to him.

It's then between the General Manager and whoever the dispute or the discussion might be with.

Q. Couldn't you, in your next day's conversation to Mr. Davis, explain about the mistake? A. Well, I don't think that we ever decided or learned that there was a mistake.

Q. Well, did you relate to Mr. Davis the explanation that Joe Doucette had given to you? A. I related Mr. Doucette's explanation, yes, but I don't think that we agreed that it was a mistake.

Q. All right.

Mr. Davis never took—strike that.

With respect to what you said about bonuses and putting in the amount of time that it took to put in the show, isn't it a fact that Joe Doucette, Jr. received a raise in Baltimore? A. I think that was prearranged before.

I think, if I remember correctly, I was not—I was not—I think the monies were discussed prior.

[495] Q. And weren't the bonuses discussed prior? A. That could be.

I have no knowledge of that whether they were discussed prior, but I rather doubt it.

Q. But you were aware that Mr. Doucette received a raise in Cleveland, Doucette, Sr., because you make out his pay-

check? A. That's right, I do, but the raise, I think, again, was something that he had negotiated prior to the tour.

Q. Now, continuing along the tour—it— A. It has nothing to do with what I said.

Q. —was a raise given to the entire crew in one of the cities? A. I don't recall so.

I think that we gave them a bonus in each city that we played in.

I think that it was 25 for the assistants and 50 for the heads, something like that.

Q. Well, was Mr. Davis' complaints about these bonuses and the amount of time that it took in, weren't those complaints very early in the tour? A. Yes.

Q. The early cities, they didn't continue on to Denver or Cincinnati? A. No.

[496] You grow used to them in time.

Q. So—well, was it the first two cities or the first three cities that there were complaints about the bonuses? A. Well, the first two tours no one really knows how it's going to be exactly, you know.

Q. Well, when did Mr.—when did Mr. Davis last complain about the amount of time to put in a show and the time it took? A. Well, I think after the first few stops, he was unhappy.

We had not gotten the time down to the eight hour regular working time.

Q. Well, the time was down in Washington, wasn't it? A. I think that we got it down to about eight hours by then.

Q. Yes, and at that time Mr. Davis stopped expressing displeasure in the bonus time? A. I don't think so.

Q. Well, how long did he continue complaining? A. Well, whenever he had to make the additional payments.

Q. Didn't you testify that the bonuses were prearranged? A. I was talking about raises then.

You're now talking about bonuses.

Bonuses were not prearranged. Raises perhaps were.

Q. How do you know that the bonuses were not prearranged? [497] A. Well, I generally know just about everything that is going on within the company and I don't think—I don't ever recall the bonuses being discussed.

I believe that that happened once when Mr. Davis visited the company and he said to Mr. Doucette if he got it in X number of hours and subsequently that happened.

Q. Couldn't that conversation about bonuses have happened at the time that Mr. Doucette was hired? A. Well now, you asking me something that I don't know.

I don't know, sir, I was not present at the time, so what you're asking me for is a conversation that I was not present at, so I don't know.

Q. Earlier you testified that the bonus was not prearranged.

Now you're telling me that it could have been, but you don't know because you were not present there; is that correct? A. I'm not telling you—I'm just answering your question.

Q. Let's try it another way.

It's a fair statement to say, then, that the bonus situation could have been arranged at the time of Mr. Doucette's hiring by Mr. Davis? A. I rather doubt it, but it would have been arranged.

As a matter of fact, I know that it wasn't prearranged.

[498] You were not there.

Now, how do you know that it wasn't prearranged? A. Because the general manager—well, I'm responsible for the entire operation of the company once it leaves New York City, and that would include all the finances.

It certainly would seem reasonable that the general manager would have told me that at X number of times, I want you to give certain people certain monies as bonuses.

Q. Well, at sometime Mr. Davis did tell you to give bonuses? A. Yes, he told me to do that one day when we arrived in a town.

We had a discussion.

* * *

Q. (By Mr. Adelman) You testified about this incident in Los Angeles where you got one price from Mr. Doucette, Sr.— A. Yes.

Q. —one price for an item from Mr. Doucette, Sr. and one price from the house manager? A. Yes.

Q. Whose price was higher? A. Mr. Doucette, Sr.

Judge Sherman: The house manager?

[499] Q. Wasn't it the house manager who gave you the other price? A. The house carpenter, it was not the house manager.

It was somebody back stage.

Q. And whose price was higher? A. Mr. Doucette, Sr.

Q. And when you questioned about it, who did you question? A. I believe that I questioned Joe, Sr.

Q. And what did he tell you? A. There was a mistake.

Q. Did you question the house carpenter again or whoever was back stage to find out whether his price still— A. Yes.

We got together and then it seemed to be some mix up there with the price.

There was definitely something irregular there.

He had quoted me one price and then he had changed his mind.

Q. And did you—

Mr. Pollack: Who—

Judge Sherman: Who quoted you one price?

The Witness: Well, I don't remember his name.

Judge Sherman: It was not Mr. Doucette?

[500] The Witness: That's right, it was not.

Judge Sherman: And who was mistaken in the quote, the house carpenter or Doucette?

The Witness: The house carpenter as having been lower than Mr. Doucette.

He said the other man made a mistake.

We went to the other man and had some words, and the figures had changed.

Judge Sherman: Whose figures had changed?

The Witness: The original figure had changed to Mr. Doucette's figure.

Judge Sherman: The house carpenter's final figure was the same as Mr. Doucette's?

The Witness: Yes.

I believe they arranged it to be that way.

Q. (By Mr. Adelman) Did you report this to Mr. Davis? A. Yes.

Q. And this is when he said, "Get rid of him, that is the final straw"? A. I don't know that those were his words, but in essence, that was it, yes.

Mr. Adelman: I have nothing further.

Q. (By Mr. Pollack) Mr. Antonelli, on the first time that you were questioned, you said that Mr. Davis told you to pay them off, just told you to pay off the Doucettes; [501] is that correct? A. Pay off the Doucettes.

Q. Yes? A. Yes.

Q. Now, are you saying that he said, "This is the final straw, pay them off?" A. Now you're taking part of the question—

Mr. Adelman: Just answer the question.

Q. I was not there.

I'm trying to find out the full conversation. A. Yes.

We had discussed the situation, yes, and the final conversation was, "Pay them and get rid of them."

Q. Now, how long did this conversation take place? A. How long I don't really recall.

Q. Well, to the best of your recollection, give me the entire conversation? A. I've stated my entire conversation with him.

Q. Well, I'd like to hear it, because I'm confused. A. All right.

We discussed the money situation.

Q. What did you say about the money situation?

I want to know what was said and I want you to identify who said it.

I assume that it was a telephone call, you were in [502] Los Angeles and he was in New York? A. Yes.

I reported the situation about the black legs.

Q. What did you say? A. I gave him the price—the two prices, and when there was a great difference in price, Mr. Davis felt that there was something going on.

Q. What did Mr. Davis say? A. You want the conversation?

Q. Yes. A. "That's it, get rid of them. I cannot take it any more," words to that effect.

I cannot be verbatim. I can't remember it exactly.

Q. That's it, get rid of them? A. After the conversation that I had given.

Q. I want to hear that. A. I told him that I had gotten two costs, one cost from the house carpenter and one from Mr. Doucette, and I felt that Mr. Doucette's cost was inflated, and when I finished my conversation, he said, "Pay them off, get rid of them."

Q. Did you tell him that when the house carpenter— A. This is all after the recomputing.

Q. That was after? A. Yes.

[503] Judge Sherman: Did the conversation with Mr. Davis in which he said, "Pay the Doucettes off," occur before or after you had spoken to Mr. Doucette, Sr. about the reason—the reason there was a discrepency in cost?

The Witness: No, after I had completed my conversations with Mr. Doucette, I then reported back to Mr. Davis.

Judge Sherman: Thank you.

Mr. Pollack: I'm confused.

Q. (By Mr. Pollack) You said that Mr. Davis told you to pay them off.

You went and paid off the Doucettes; is that correct? A. Say that again.

Q. Mr. Davis said, "That's the last straw, pay them off"? A. No, those are my words, "That's the last straw."

Q. He said something to the effect? A. Yes, sir, right.

Q. We'll leave that out. A. Yes.

Q. He said, "Pay them off?" A. Yes.

Q. You knew that that meant to terminate them? A. Certainly did.

[504] Q. All right.

Then you went to Mr. Doucette to get an explanation of the cost? A. No.

I then went to Mr. Doucette and paid him off.

Q. Paid him off? A. Yes.

Q. When did you get the explanation from Mr. Doucette? A. This is before all this conversation.

I tried to have all my information for Mr. Davis.

* * *

[505] Q. (By Mr. Pollack) You had a conversation with Mr. Davis in which he said "Pay them off?" A. Yes.

Q. Prior to that, did you have a conversation with Mr. Doucette and the house carpenter about the difference in the two estimates that you had? A. Yes, that's right.

Q. Now, when was that? A. It was prior to my conversation with Mr. Davis.

Q. How much prior? A. I don't recall.

Q. Was it prior to after the opening night in Los Angeles? [506] A. It was prior—I would—to the best of my recollection, it would have to be prior to because the goods were needed for the opening, so I would guess—I would imagine that it was prior to the opening.

I don't think that it was after the opening.

Judge Sherman: The recomputation by the head carpenter, did that occur prior to or after Mr. Davis told you to pay off the Doucettes?

* * *

Q. (By Mr. Pollack) Now, you were not—when you were talking in terms of a price given to you by the house carpenter and a price given to you by Joe Doucette, they were not competing for the same job, were they? A. No.

Q. Were these estimates then an estimate of how many men hours would be needed to do a particular job? [507] A. No.

Q. What was the estimate of? A. The cost of the goods.

Q. And did Mr. Doucette indicate to you the store or place that he purchased these goods? A. No.

Q. Or did you ask for a receipt or a bill? A. No.

Q. Is there any reason why you didn't ask for a receipt or a bill from the vendor of these goods? A. Because he didn't make the purchase.

Q. Who made the purchase? A. The purchase was not made, sir.

Q. You mean this discussion about two different bids was

a discussion about two different bids for something that was never purchased? A. It was an estimate of cost.

Q. From Mr. Doucette and the house carpenter and not from the seller? A. The seller had nothing to do with it.

There was no seller involved, sir.

Q. Well, somebody would have to purchase the goods; is that correct?

Where would they be purchased from? A. They may be owned by someone.

[508] Q. Other than Mr. Doucette? A. That's right.

Q. Well, would this be some sort of a supply house or retail store? A. I don't believe so, no.

Q. Where would they—I take it that we're talking about some sort of material similar to curtains? A. Fabric, yes.

Q. Fabric, yes.

Where would this fabric be purchased? A. It could be purchased from anywhere that would sell fabric of that type.

Q. Well, was there anything that kept you from making a telephone call to the seller of the fabric? A. It's not—it's not my position to do that.

It's up to the carpenter.

Q. Well, after two carpenters had apparently made an attempt to find out a cost and they has different costs why didn't you make a telephone call and order the cheaper material? A. Because it would not be my place to order any material.

It was not my place to order any supplies.

Q. Why didn't you direct Mr. Doucette, Sr. to order from the cheaper store—order from the place that the [509] house carpenter got his price from? A. Well, I believe that—I believe that there was no store involved.

I think that you are trying to get to a store.

There was no store.

It was property belonging to somebody.

Q. Why not buy the property from the somebody who gave the lower price? A. Well, I don't think that they knew—I don't think—

Q. What would prevent you from doing that, if the house carpenter gave you a price— A. Yes.

Q. —you knew by looking at it that that price was lower than the price that Joe Doucette gave you, why didn't you say, "Let's buy that"? A. Because when I went back to Doucette, he said, "You're charging—" I said, "You're charging me more than the house carpenter."

He said no, and then they conferred and then later the price was adjusted.

* * *

AFFIDAVIT OF SERVICE BY MAIL

State of New York)
County of Genesee) ss.:
City of Batavia)

Docket # 76-4087
National Labor Relations Board
vs
The Grease Company et al

I, LaVerne C. Cooley Jr. being duly sworn, say: I am over eighteen years of age and an employee of the Batavia Times Publishing Company, Batavia, New York.

On the 15th day of July, 1976 I mailed Three copies of a printed Appendix in the above case, in a sealed, postpaid wrapper, to: Barandes, Rabbino and Arnold, 18 East 48th Streetp NY, NY 10017 Att: Joel Arnold, Esq.

and three copies to Battle, Fowler, Lidstone, Jaffin, Pierce and Kheel, 280 Park Avenue, New York, New York 10017

at the First Class Post Office in Batavia, New York. The package was mailed Special Delivery at about 4:00 P.M. on said date at the request of:

Elliott Moore, Dpty. Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1717 Pennsylvania Avenue, NW, Washington, D. C. 20570

LaVerne C. Cooley Jr.

Sworn to before me this

15th day of July, 1976

Patricia A. Lacey

PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1977